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No. 35

In the Supreme Court of the United States

OCTOBER TERM, 1959

LLOYD BARENBLATT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The majority (R. 291–303) and two dissenting opinions (R. 303–307) in the Court of Appeals, sitting *en banc*, which were rendered following this Court's remand of the case (R. 290; 354 U. S. 930) for consideration in the light of *Watkins* v. *United States*, 354 U. S. 178, are reported at 252 F. 2d 129. The original opinion of the three-judge division of the Court of Appeals (R. 271–285) is reported at 240 F. 2d 875.

JURISDICTION

The judgment of the Court of Appeals following this Court's remand was entered on January 16, 1958 (R. 307). The petition for a writ of certiorari was filed on February 15, 1958. Certiorari was

granted on April 14, 1958 (R. 308; 356 U. S. 929). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the resolution establishing the House Committee on Un-American Activities is invalid as an authorization for the use of compulsory process.

2. Whether the House of Representatives authorized the Committee to conduct by compulsory process an investigation of Communism in the field of education.

3. Whether petitioner had a right under the First Amendment to refuse to tell the Committee whether he was a member of the Communist Party.

4. Whether petitioner objected to the Committee's questions on grounds of lack of pertinency to the subject of inquiry, and whether their pertinency was in any event clear.

STATUTE AND RESOLUTION INVOLVED

2 U. S. C. 192 (R. S. 102, as amended) provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprison-

ment in a common jail for not less than one month nor more than twelve months.

Rules X and XI of the Rules of the House of Representatives for the Eighty-third Congress,[1] adopted January 3, 1953, by House Resolution 5, 83d Congress (99 Cong. Rec. 15–24),[2] provided in pertinent part as follows (99 *id.* 16, 18; G. Ex. 2, R. 68–69):

Rule X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees:

* * * * *

(q) Committee on Un-American Activities, to consist of nine Members.

* * * * *

Rule XI

POWERS AND DUTIES OF COMMITTEES

All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively:

* * * * *

17. Committee on Un-American Activities.

(a) Un-American activities.

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[1] It was during the Eighty-third Congress (June 28, 1954) that the refusals to answer the questions here involved occurred.

[2] The Rules which the House thus specially adopted for the Eighty-third Congress were, in pertinent part, identical with its standing Rules (X and XI), as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, 828.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of Un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * *

STATEMENT

Petitioner was charged in a five-count indictment (R. 1–2), returned in the United States District Court for the District of Columbia, with having refused, in violation of 2 U. S. C. 192 (*supra*, pp. 2–3), to answer five questions, pertinent to the matter under inquiry, put to him by a subcommittee of the Committee on Un-American Activities of the House of Representatives. These questions were whether he then was or ever had been a member of the Communist Party (counts 1 and 2), whether he had known one Francis Crowley as a member of the Communist Party (count 3), and whether he (petitioner) had ever been a member, while a student at the University of Michigan, of the "Haldane Club of the Communist Party" (count 4) or of the "Council of Arts, Sciences, and Professions" (count 5). Petitioner, having waived his right to a trial by jury (R. 65–66), was found guilty by the court on all counts (R. 67) and was sentenced generally to six months' imprisonment and to pay a fine of $250 (R. 67).

On appeal to the Court of Appeals for the District of Columbia Circuit, the judgment of conviction was, on January 3, 1957, unanimously affirmed by a three-judge division of that court (R. 271–289; 240 F. 2d 875). Thereafter, this Court, on June 24, 1957, on petition for a writ of certiorari to review this judgment, granted the petition, vacated the judgment of affirmance, and remanded the case to the Court of Appeals "for consideration in light of *Watkins* v. *United States*, 354 U. S. 178" (354 U. S. 930; R. 290). The case was thereafter rebriefed and reargued in

the Court of Appeals, which *sua sponte* determined to hear the case on remand *en banc*. On January 16, 1958, the Court of Appeals again affirmed the judgment of conviction (R. 291–303, 307), four judges dissenting (R. 303–307).[3]

The pertinent facts may be summarized as follows: Rule X of the standing Rules of the House of Representatives, as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, provides for a Committee on Un-American Activities as a standing committee to be elected by the House at the commencement of each Congress. Under Rule XI (60 Stat. 823, 828), all proposed legislation relating to the subject of Un-American activities is to be referred to this Committee, which is authorized to investigate "(i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." These standing Rules were, in addition, specially adopted by the House, at the beginning of the Eighty-third Congress (during which the offenses here involved occurred), as part of the rules

[3] The majority opinion was written by Circuit Judge Bastian, who also authored the opinion of the original three-judge division. Chief Judge Edgerton wrote a dissenting opinion in which Circuit Judge Bazelon joined (R. 303–306), and Circuit Judge Fahy wrote a separate dissenting opinion in which Circuit Judge Washington joined (R. 306–307).

of the House for that Congress (H. Res. 5, 83d Congress (R. 68–69; see *supra*, pp. 3–4)).

On February 25, 1953, the Committee commenced a series of public hearings in connection with an investigation which it was conducting into "Communist Methods of Infiltration" into the field of "Education" (G. Ex. 7, p. 1; R. 17, 75).[4] Immediately prior to interrogating the first witness, Representative Velde, the Committee Chairman, made an opening statement setting forth the nature and purpose of the investigation (R. 76–79).[5] The investigation, the Chairman said, was one of a series which the Committee had been conducting into "Communists and Communist activities wherever it has substantial evidence of its existence" (R. 77). "The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field" (R. 77). Pointing out that "[t]he committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive

[4] Government Exhibit 7 is part 1 of the printed transcript of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., February 25, 26 and 27, 1953, entitled *Communist Methods of Infiltration (Education)*. Excerpts from this transcript appear in the printed record at R. 75–172.

[5] This statement by the Committee Chairman is reproduced in full as an appendix to the original opinion of the Court of Appeals (R. 285–288) and is again referred to in the majority opinion of the *en banc* court upon remand (R. 297).

and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid Congress in any necessary remedial legislation" (R. 77), the Chairman observed (R. 77–78):

> It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. * * *

The Chairman further said that, since "Communism and Communist activities cannot be investigated in a vacuum," the "investigation must, of necessity, relate to individuals" (R. 78). "[T]he objective of this investigation," the statement concluded (R. 79)—

> is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.

The Committee thereupon proceeded with the taking of testimony (R. 79). Witnesses heard on that day and from time to time thereafter during the year 1953 presented to the Committee "facts within their own knowledge concerning Communist efforts to infil-

trate and dominate the teaching profession within the United States" (G. Ex. 9, p. 9; R. 24, 242).[6]

Illustrative of the testimony was that of the first witness, Robert Gorham Davis,[7] who admitted that he had been, from 1937 to the fall of 1939, a member of a Communist cell on a university campus which included faculty members, teaching fellows, and graduate students (R. 80, 83–84). The members of this cell, Davis testified, received instructions and directives from the Communist Party through paid functionaries of the Party (R. 87, 128). From time to time, they were addressed by Party functionary Philip Frankfeld, whose purpose it was to "educate" them politically (R. 87, 89, 116).[8]

Davis testified that members of the cell would seek to attain positions of leadership in various organizations for the purpose of seeing to it that the policies of such organizations "would be as close to the policies desired

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[6] Government Exhibit 9 is the *Annual Report of the Committee on Un-American Activities for the Year 1953* (H. Rept. No. 1192, 83d Cong., 2d sess.). Excerpts from this report appear in the printed record at R. 241–261.

[7] Davis' testimony is contained in Government Exhibit 7, pages 3–45, and appears in the printed record at R. 79–142.

[8] Frankfeld was one of the defendants convicted in a Smith Act trial. See *Frankfeld* v. *United States*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922.

Davis testified (R. 124–127) that a pamphlet which he and Granville Hicks, another member of the cell (see *infra*, pp. 15–16), prepared against anti-Semitism was criticized by Frankfeld "with great care and attention" (R. 124) to see that it would be acceptable "[t]o the higher functionaries of the Communist Party" (R. 127).

by the Communist Party as possible" (R. 88).[9] Their primary target in this respect was the local "Teachers' Union" (R. 89, 91, 120). Davis acknowledged that, according to official Communist doctrine as set forth by Lenin, the "chief task of those members of the teaching profession who have taken their stand with the International and the Soviet Government is to work for the creation of a wider and, as nearly as possible, an all-embracing teachers' union" which should become "a broad teachers' trade-union embracing vast numbers of teachers; a union which will resolutely take up its stand on the Soviet platform and the struggle for socialism by means of a dictatorship of the proletariat" (R. 90). To help implement such a policy, Davis testified, "We worked very hard to build up the Teachers' Union" (R. 91). Prior to meetings of the Teachers' Union, the members of the cell used to discuss the candidates which they would propose and support and the policies which they would urge on the Union—policies "which the Communist Party as a whole was interested in having endorsed or adopted" (R. 91). They would also "endeavor to control the selection of delegates from the local Teachers' Union" to "district" and "national conventions" (R. 92).

Davis testified that he attended two national conventions of the Teachers' Union (R. 94) and that at

[9] Although Davis did not realize it until the Russian shift of policy in 1939, he agreed with Committee counsel that, during the period of his membership, "the Communist Party was being used as a tool by a foreign power for the advancement of its own foreign policy," and he stated that Party members "were in a certain sense Soviet nationalists and not working for the broader interests of the American people" (R. 82).

the second convention he attended a Communist Party caucus which was "fairly large" and which "operated very much" as the Communist unit operated within his local union (R. 100). Davis also attended a Communist Party caucus of the Teachers' Union in New York City (R. 103). This caucus comprised representatives from different parts of the country, including New England, the Middle Atlantic States, and the Middle West (R. 106). The purpose of the meeting was "to determine the policies of the Communists who were in positions of leadership within the American Federation of Teachers" (R. 105). The meeting was addressed by Jack Stachel,[10] "a high official" in the Communist Party (R. 104), who outlined the "course of action" the representatives were to take (R. 105).

Another activity of the Communist cell to which Davis belonged was the formation of Marxist study groups (R. 88). These groups were formed, first, "to disseminate Marxism, which is one of their important principles always and everywhere" and, secondly, because "it was a very good way of recruiting members into the Communist Party" (R. 117). Their activities extended into industrial and rural areas[11] (R. 123)

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[10] Stachel was one of the defendants in the Smith Act prosecution which culminated in *Dennis* v. *United States*, 341 U. S. 494.

[11] According to Davis, the role of the Communist teacher in industrial and rural areas was aptly described in an article entitled *The School and the People's Front*, which appeared in the May 1937 issue of *The Communist*, the Party's official theoretical organ, and which states in part (R. 119, 122, 123):

"Such teachers can also be used to advantage to conduct classes in Marxism, Leninism, for workers generally, and many

and included the distribution of the Marxist classics (R. 118).

Davis stated that, whereas efforts were made to recruit faculty members, it was his experience that no attempt was made to recruit students into the Party or to directly influence students in the classroom (R. 95, 98). The primary reason for this was that it was "much too risky", since "students join something and leave it and they talk freely and it would have led to the exposure of the individual members" (R. 98–99).[12] Davis testified that outside the classroom the Communist was "likely to have more influence" (R. 96). Members of his cell adopted "the Communist line" when they addressed political meetings of students, where "the prestige of the teacher" "undoubtedly" had an effect (R. 122). He admitted that "almost certainly" there were student organizations of the Com-

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such teachers should be assigned not to school units but to factory or industrial units where they can have great aid in party education in helping with leaflets, shock papers, and so forth. Others can plan an important role in the educational activities of the Young Communist League.

* * * * * *

"In rural communities teachers who are among the few educated people are looked up to with tremendous respect. They are in a position to become community leaders. As a means of mobilizing the people in the villages and countryside, steps should be taken to try to send Communist teachers into rural communities where they should become active in all community organizations."

[12] Every effort was made to keep the membership of the cell secret from the "rank-and-file" members of the Party because "[t]his was a professional unit and professional units were always particularly protected so that there would be no publicity which would be harmful to the careers of the individual members" (R. 86).

munist Party, which functioned in the same manner as the group in the Teachers' Union (R. 99, 100).

Davis agreed with Committee counsel that "the Communist Party had for its objective the influencing of students without the student realizing or knowing that the teacher was, in fact, a Communist Party member" (R. 120). Its ultimate goal is to have studies "revolutionized" and "cleansed of religious, patriotic, and other features of the bourgeois ideology" with the result that "students will be taught on the basis of Marxian dialectical materialism, internationalism, and the general ethics of the new Socialist society" (R. 119).[12]

Davis further testified that, from his experience, the Party had the following objectives, as set forth in *The Schools and the People's Front*, by Richard Frank, an article which appeared in the May 1937 issue of the Party organ, *The Communist* (R. 119–120, 122):

> The task of the Communist Party must be, first and foremost, to arouse the teachers to class consciousness and to organize them into the American Federation of Teachers, which is the main current of the American labor movement.
>
> In the effort to organize the teachers, every care must be taken to bring together in united front actions all existing teacher organizations. * * *
>
> * * * * * *

[12] Davis testified that these quotations, from *Toward Soviet America*, by William Z. Foster, reflect "the pattern * * * followed in Communist countries" (R. 118–119).

> Communist teachers cannot afford to ignore this fact: That they come in contact with the children of the masses; that they are responsible for training these children.
>
> Communist teachers are, therefore, faced with a tremendous social responsibility. They must consider not merely their own teacher problems but the problems of the children. They must take advantage of their positions without exposing themselves to give their students, to the best of their ability, working-class education.
>
> * * * * *
>
> Only when teachers have really mastered Marxism and Leninism will they be able skillfully to inject it into their teaching at the least risk of exposure and at the same time to conduct struggles around the schools in a truly Bolshevik manner.

Davis testified that the following "sum[ming] up" of "the substance" of his testimony by Committee member Jackson was accurate:—that the Communist Party (1) sought to "recruit teachers and professors" into the Party, (2) "la[id] down certain broad policies which these teachers and professors were expected to follow," (3) expected such recruited teachers to "infiltrate other teacher groups with the idea of putting forward policies and directives enunciated by the Communist Party," (4) "exercise[d] generally, on behalf of the Communist Party, what influence they could," and (5) "influence[d], to the extent possible, the election of group leaders * * * who were individuals known to be favorable to the policies of the Communist Party" (R. 136–137).

Except for the fact that "the situation probably requires much more secrecy", Davis testified that it can be "taken for granted" that the same Communist techniques, which he described in his testimony, are being followed today (R. 94). He warned that, while "the open influence" of the Party among teachers and students is "very slight now" (R. 95), members are "[m]uch more" subject to discipline than previously (R. 135). He felt that it was "necessary to have all possible information about the activities of the Communist Party itself for security reasons" and that "in the present situation * * * the Government should explore and expose the ramifications of the Communist Party" (R. 97).

The next day, February 26, 1953, Granville Hicks testified before the Committee.[14] Hicks testified that he joined the Communist Party during the winter of 1934–1935 and remained a member until September 1939 (R. 144). During part of this time, from 1938 to 1939, he belonged to the same Party cell as Davis (R. 144, 154), who, according to Hicks, had described its activities to the Committee "very well" (R. 157). He admitted that at times he transmitted directives and instructions to the cell since he "was carrying on a rather wide range of Communist propaganda activities, and therefore, was likely to go into Phil Frankfeld's office, and he would tell me things he wished our group would discuss or would do" (R. 158). He spoke "at various meetings of many kinds" on an average of two or three times a week for "the pur-

[14] Hick's testimony is contained in Government Exhibit 7, at pp. 95–115, and appears in the printed record at R. 143–172.

pose of advancing the cause of communism generally" (R. 158). In the light of his experience, Hicks believed that "the popular front was simply a dodge * * * to serve the foreign policy of the Soviet Union" and that the purposes of the Party in organizing branches in the colleges were "to carry out the existing line" of the Party and "to try to have a corps of disciplined revolutionaries whom they could use for other purposes when the time came" (R. 160). While of the view that the problem of Communist teachers should be treated on a "calculated risk" basis (R. 165), Hicks testified (R. 163):

> Well, I feel, as I said a moment ago, that the evidence is overwhelming; that the Communist Party in this country is and always has been dominated by the Soviet Union. I think that every member of the Communist Party is an actual or a potential agent of the Soviet Union.[15]

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[15] Explaining what he meant by "potential agent," Hicks stated (R. 163):

"I would like to stress that word 'potential.'

"Any given individual at any given moment may not be an agent, even though he is a member of the Communist Party; that is, when a test comes; that would make him an agent, in effect, of the Soviet Union. He may break with the party, as I believe many people have done. That happens not only in moments when the party line changes. I think that has happened to individuals who were given assignments that they suddenly saw were in effect treasonous, and they would not carry such assignments out, and they quit then and there. So, as I say, you cannot at any moment, at any given moment, say a particular member of the Communist Party is an agent of the Soviet Union, but I think you can say he is potentially an agent, and that that is exactly how the Communist Party would like to use him if it could."

During 1954, the Committee continued its inquiry into Communism in education. On June 28, 1954, Francis Crowley, in the presence of petitioner (R. 220), testified before the Committee.[16] In introducing Crowley to the Committee, the committee counsel said in part (R. 175):

> The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley.
>
> It will deal with activities in Michigan, Boston, and in some small degree, New York.

Crowley testified extensively as to his Communist Party activities while he was enrolled as a student at the University of Michigan from August 1947 to June 1950 (R. 186–217). While a student there, he said, he was a member of the "Neafus Club," a Party organization comprised of undergraduate students which operated, for the most part, on a secret basis (R. 187–189). But in addition to secret meetings the club also had open meetings to which outsiders were invited (R. 189). The open meetings were represented as study groups and were not identified as Communist Party meetings (R. 189). Crowley testified that the Club had "a great deal of influence" and used "every method that Communists could devise to influence the student body opinion in the

[16] Crowley's testimony is contained in Government Exhibit 8, the printed transcript of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 2d sess., June 28 and 29, 1954, entitled *Communist Methods of Infiltration (Education—Part 9)*. It appears in the printed record at R. 175–217.

direction of the Communist movement" (R. 198). Over a period of years, as students came and left the University, Crowley testified, the total membership of the Club was "staggeringly large," like a "revolving door" (R. 197–198).

Early in 1950, Crowley testified, he transferred to the "Haldane Club" of the Communist Party, a group composed of graduate students and teaching fellows at the University (R. 203), which was "even more secret" than the Neafus Club (R. 204). Through his membership in the Haldane Club, he testified, he was "propagandized into believing" that South Korea was the aggressor in the Korean war (R. 215). Although the Club appeared to him at the time to be chiefly "an intellectual group, discussion group" (R. 215), he "definitely" felt, as of the time of his testifying, that the Communist Party was "a conspiracy and not a political party" (R. 217).

Crowley testified that he shared an apartment with petitioner while they were both graduate students at Michigan in 1950 and that petitioner was likewise a member of the Haldane Club of the Communist Party during that time (R. 209–210).

Following Crowley, the Committee heard the testimony of Robert H. Silk (G. Ex. 8, pp. 5783–91), Norman Cazden (*id.*, pp. 5791–6), and Lester Beberfall. (*id.*, pp. 5796–5801), all of whom had been identified by Crowley as fellow members of the Communist Party with him at the University of Michigan at some time during the period 1947–1950 (*id.*, pp. 5772–3, 5778). These witnesses were questioned about their Communist Party activities at the University

of Michigan and at other educational institutions (*id.*, pp. 5784–86, 5792–3, 5795, 5797–800). All three, admitting that they had heard Crowley's testimony concerning them, invoked their privilege against self-incrimination and refused to answer all such questions (*id.*, pp. 5784, 5792, 5797).

Petitioner, who also had heard Crowley's testimony (R. 220), was next called to testify.[17] He admitted that he had been a teaching fellow at the University of Michigan from 1948 to 1950 (R. 239), and that he knew Crowley (R. 220), but refused to state, after having been specifically ordered to do so, whether he then was or ever had been a member of the Communist Party (R. 222–225, 237–238) and to answer the other questions forming the subject-matter of the various counts of the indictment (R. 237–238; see *supra*, p. 5).[18] In so refusing he specifically dis-

[17] Petitioner's testimony is contained in Government Exhibit 8, at pp. 5801–5814. It appears in the printed record at R. 218–241.

[18] Among the questions which petitioner refused to answer was whether he had ever been a member of the "Council of Arts, Sciences and Professions." Donald T. Appell, who had been an investigator for the Committee for ten years (R. 33), testified at petitioner's trial that he had made an investigation of the University of Michigan Chapter of the Council of Arts, Sciences and Professions (R. 62), a campus organization which was required to register with the Dean of Men (R. 63). After a study of its membership list, which was provided by the Dean, the Committee had reason to believe that "a majority of its officers were members of subversive organizations of the Communist Party" (R. 64). The organization was eventually ruled off campus as a student organization after a finding by the University authorities that a "great many of the members" were not actually students (R. 64).

claimed reliance on his privilege against self-incrimination (R. 224–226, 240). His refusals were based, he said, on his belief that the questions asked involved an inquiry into his "political beliefs," "religious beliefs," "personal and private affairs," and "associational activities," and that any such inquiry was "beyond the powers of this committee" (R. 226, 228). He did not ask the Committee to explain how the questions which he refused to answer were pertinent to the subject of the inquiry, or to state what that subject was, nor did he give any indication that he was not fully aware of the pertinency of the questions to the subject of inquiry.

At the close of petitioner's testimony, before petitioner had been excused, the following comments were made by the members of the Committee (R. 240):

> Mr. DOYLE. Mr. Chairman, I think the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, dealing with the question of the responsibility that we have as a congressional committee under Public Law 601. * * * And that this witness and these other witnesses could help us in line with our Public Law 601 responsibility to have hearings with reference to recommendations for legislation in this area under Public Law 601 in accordance therewith.
>
> Mr. VELDE. I concur with you, Mr. Doyle, and I wish to further state that the record should show that the evidence or information contained in the files of this committee, some of

> them in the nature of evidence, shows clearly that the witness has information about Communist activities in the United States of America, particularly while he attended the University of Michigan.
>
> That information which the witness has would be very valuable to this Committee and its work.
>
> It is the opinion of the committee, at least the Chair, that the committee has a constitutional legal right in all ways and forms and means to get the information which has been requested from the witness.

The Committee thereafter reported the fact of petitioner's contumacy to the House of Representatives. In its report (H. Rept. No. 2457, 83d Cong., 2d sess. (G. Ex. 4, reproduced at R. 69–73 and at 100 Cong. Rec. 11609–11613)), the Committee notified the House of petitioner's appearance before it and his refusal to answer Committee questions (R. 70–71). It advised the House that petitioner's refusals had "deprived your committee of necessary and pertinent testimony and places the said witness in contempt of the House of Representatives of the United States" (R. 73).

The exact questions which petitioner refused to answer (see *supra*, p. 5) were stated in the report (R. 71), which also set forth in its entirety the transcript of petitioner's testimony before the Committee, including the context in which the questions were propounded and petitioner's stated reasons for refusing to answer them (R. 72–73, 218–241).[18] The report was,

[18] Included in this transcript, as reproduced in the report (see R. 72–73), was the formal statement of petitioner's objections

on July 23, 1954, "by direction of the Committee on Un-American Activities," submitted to the House, on the floor of the House, by Committee Chairman Velde (100 Cong. Rec. 11609) and read by the Clerk (100 *id.* 11609–11613). The Committee Chairman then offered a resolution—H. Res. 666, 83d Cong., 2d sess. (G. Ex. 5, R. 73–74), set forth at 100 Cong. Rec. 11613—resolving that the Speaker of the House certify the Committee's report of petitioner's refusals, "'together with all of the facts in connection therewith,'" under the seal of the House to the United States Attorney for the District of Columbia, to the end that petitioner be proceeded against as provided by law. The House agreed to the resolution (100 Cong. Rec. 11613), the Speaker certified the report to the United States Attorney (G. Ex. 6, R. 74–75), and petitioner's prosecution followed.

SUMMARY OF ARGUMENT

I

The resolution establishing the House Committee on Un-American Activities is not invalid as an authorization for the use of compulsory process.

A. This Court, in *Watkins* v. *United States,* 354 U. S. 178, criticized the Committee's authorizing resolution, but (as is clear from the opinion) did not hold the resolution invalid.

B. Whatever justification there may be for criti-

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to the Committee's questions, which the Committee had incorporated in full in the transcript as "Barenblatt Exhibit No. 1" (R. 227–235). This statement, as noted by the Court of Appeals (R. 299), was in the nature of a "lengthy legal brief attacking the jurisdiction of the committee * * *."

cism of the authorizing resolution on its face on grounds of vagueness and imprecision, the resolution comes before the Court, not in its bare terms alone, but with a "persuasive gloss of legislative history" (*United States* v. *Witkovich*, 353 U. S. 194, 199) which shows beyond a doubt that there is one subject, above all others, which the House of Representatives has desired and does desire this Committee continuously to investigate and periodically to report on to it, That subject is Communism, in its various aspects and facets, and the menace posed by that system and ideology to American government and institutions.

II

The Committee was authorized to conduct by compulsory process an investigation of Communism in the field of education.

A. *Sweezy* v. *New Hampshire*, 354 U. S. 234, does not require that the Committee's charter should be construed as excepting the field of education from the reach of the Committee's processes; for *Sweezy* is distinguishable from this case in at least two decisive respects. First, unlike the New Hampshire Legislature involved in *Sweezy*, the legislative body here concerned (the House of Representatives) retained at all times responsibility for the actions of its Committee, which could only report to its parent body and recommend action with respect to recalcitrant witnesses. The House itself cited petitioner for contempt, and did so only after being fully apprised of the circumstances surrounding his being called as a witness. Secondly, while the questions which Sweezy was con-

victed for refusing to answer related to his connections and associations with the *Progressive* Party, the Committee's inquiry in this case was concerned with the *Communist* Party's infiltration and penetration of the field of education, and the questions asked of petitioner were limited to his membership and activities in the Communist Party. Whatever view one may have as to the character of the Progressive Party as a legitimate political party, the Congress has the gravest of reasons for *not* considering the Communist Party as a conventional political party.

B. The House has affirmatively indicated that inquiry into Communism in education is within the Committee's charter.

1. Congress, at the time of petitioner's appearance, had already taken action in accordance with the findings of the Committee in this area, by enacting Section 228 of the Veterans' Readjustment Assistance Act of 1952, which deals with education.

2. The House, in 1953, overwhelmingly voted funds to finance the Committee's work with full knowledge that the Committee had recently commenced an inquiry into Communism in education and was about to continue the inquiry.

3. In 1954, the House again appropriated funds with which to finance the Committee's work, again by an overwhelming vote, after the Committee had made a full report on its activities in the field of education.

4. Since the Committee's 1953–54 inquiry into Communism in education involved in this case, the House has twice renewed the Committee's charter, unchanged.

5. The very act of the House in citing petitioner for contempt constituted ratification of the Committee's interpretation of its charter as authorizing inquiry in the field of education.

III

Petitioner had no right under the First Amendment to refuse to tell the Committee whether he was a member of the Communist Party.

A. A witness before a congressional committee conducting a proper inquiry into the nature and extent of Communist infiltration into an area with which Congress has a legitimate legislative concern has no right under the First Amendment to refuse to disclose whether he is or has been a member of the Communist Party.

1. While Congress has no general power to inquire into political beliefs and associations, it does have the power to inquire into the nature, character, and activities of, the seriousness of the danger emanating from, and other aspects (including the number and identity of its members) of the particular organization known as the Communist Party of the United States. This is because there is—at the very least—the strongest reason to believe that that organization, dominated and controlled by a foreign power, seeks, under the cloak and style of a domestic political party, to subvert and destroy the American form of government by force and violence and other unconstitutional means. It is too late in the twentieth century to treat Communist Party membership as if it were of the

same type and order as membership in one of the conventional political parties.

2. It is for these reasons that the lower courts have correctly upheld the power of Congress, in proper cases, to inquire whether a witness is or has been a member of the Communist Party. "If Congress has power to inquire into the subjects of Communism and the Communist Party," as was said in *Barsky* v. *United States*, 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843, "it has power to identify the individuals who * * * belong to the party." For "Personnel is part of the subject" (*ibid.*).

B. The Committee had a valid legislative purpose in interrogating petitioner which outweighed his interest in nondisclosure.

1. Congress has a legitimate interest in the problem of Communist infiltration of the field of education. While education is a matter primarily of State and local concern, the long history in this country of federal enactments directly or indirectly subsidizing education at all levels shows that this subject is also a matter of vital concern to the Federal Government. These federal programs—involving the annual expenditure of millions of dollars of federal funds—make clear why it is a matter of grave concern to the Congress and its committees, particularly the House Committee on Un-American Activities, to be thoroughly informed with respect to whether and to what extent the faculties and administrative staffs of the nation's educational institutions have been penetrated by persons who are members and subject to the discipline of the Communist Party. One of these programs in par-

ticular—the widely prevalent utilization by the Department of Defense, the Atomic Energy Commission, and other agencies of the Federal Government, pursuant to government contracts with individual colleges and universities, of the personnel and facilities of these institutions in programs of research and development, much of it highly classified—presents an especially difficult and sensitive aspect of Congress' legislative concern with the problem of Communism in education, and the record of the hearings reflect the emphasis which the Committee placed upon this phase of its inquiry.

2. The Committee's questions to petitioner were related to a legitimate legislative inquiry into Communist infiltration into education.

(*a*) The statement in the Committee's 1954 *Annual Report* that "[t]he 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" does not support petitioner's contention that the Committee's sole purpose in interrogating him was to "expose for the sake of exposure." *Watkins* v. *United States*, 354 U. S. 178, 200. A reading of the full report indicates that the primary purposes of the inquiry were in aid of legislative processes.

(*b*) A legislative inquiry need not be restricted to those facts which prove the need for new legislation, nor is it limited to the precise area which Congress has power to regulate. The power to investigate is broader than the substantive authority which may eventually be exerted, for not until the whole region

of facts has been canvassed can it be determined where the boundaries of regulation should be drawn. Judicial inquiry into a committee's "legislative purpose" must not be restrictive or hostile, but must take account both of the powers of Congress and of its pressing need to inform itself broadly.

(c) The record does not support petitioner's contention that the "articulated purpose and focus" of the Committee's inquiry was merely the Communist Party's ideological influence on thought, discussion, and expression. The Committee was investigating the Party as an agency of a foreign government, dedicated to the ultimate overthrow of our government by unlawful means. It is wholly unrealistic to suggest that, because the conspiratorial aspects of the Party should properly be the main focus of inquiry, the "intellectual" or "ideological" aspects of that conspiracy must be forbidden territory—even to touch upon which renders the entire inquiry invalid as an illicit invasion of constitutionally protected freedoms.

3. Petitioner's interest in nondisclosure is subordinate to the Congressional interest. The view of the American Association of University Professors, as *amicus curiae*, that compelling the disclosures here attempted constituted an unjustifiable infringement of academic freedom is based on the untenable assumptions (1) that the Communist Party is merely another political party; (2) that petitioner was questioned concerning his beliefs, studies, or teaching; (3) that petitioner was justified in refusing to answer the questions involved here because other witnesses at

other times and before other committees may have been subjected to improper interrogation; (4) that education is a "special" domain to which "special considerations"—applicable to no other area of national affairs—must govern in any judicial consideration of the congressional power to investigate Communism; and (5) that all the requirements of academic freedom have constitutional status. The *amicus'* views, moreover, are not shared by other responsible spokesmen for the academic community.

IV

There is no foundation for petitioner's claim that his conviction must be reversed because he was not sufficiently apprised of the pertinency of the questions to the subject of the inquiry.

A. Petitioner at no time objected to the questions on grounds of lack of pertinency. *Watkins* requires a witness to make such objection (as a condition of his later defending himself against contempt charges on grounds of lack of pertinency), so as to give the Committee an opportunity to explain the basis of pertinency should that basis not already be clear.

B. In any event, the pertinency of the questions was undisputably clear. Petitioner admitted having heard the testimony of witness Crowley, who preceded him on the stand, and it was clear from that testimony and the surrounding circumstances that the subject of the inquiry was Communism in education. The pertinence to that subject of the questions put to petitioner was equally clear.

ARGUMENT

The wide-ranging arguments by petitioner and the *amici* call for a delineation of the precise problem involved in this particular case. In the course of an inquiry by the House Committee on Un-American Activities concerning Communists in educational institutions, petitioner refused to answer five questions. The main unanswered questions related to his present and past *membership in the Communist Party* and the "Haldane Club *of the Communist Party*" (at the University of Michigan); and to his knowledge of "Francis Crowley *as a member of the Communist Party*" (emphasis added).[20] Thus, petitioner refused to tell whether he himself was a present or a past member of the Communist Party, and whether he had known as a Communist Party member a man who had already openly admitted such membership. This case involves a direct inquiry as to Communist Party *membership*. It does not involve questions as to one's beliefs or general associations or political thinking. And though petitioner had been a student and teacher at Michigan and was a teacher at another institution at the time of the inquiry, the questions did not relate to the content of either his studies or his teaching. Nor did the questions demand that petitioner "inform" against old associates. Rather, he was asked about himself and about a colleague who, to petitioner's certain knowledge, had already openly disclosed his Party activities. Moreover, the Committee did not

[20] Crowley had previously admitted his Party membership (*supra*, pp. 17–18), and petitioner knew of this admission.

haphazardly or casually choose petitioner as a witness; it had very substantial information that he knew about Communist Party activities at the University of Michigan, and might still be a Party member. The crux of the case is that, in these circumstances, petitioner refused even to tell the Committee whether he himself was a *present member* of the *Communist Party*,[21] and his conviction must be judged on that basis.

In that light, we discuss in order the contentions that (1) the Committee's authorizing resolution is too vague to support the compulsory taking of testimony in any inquiry whatsoever; (2) the Committee was not authorized by the House of Representatives to investigate Communism in the field of education; (3) petitioner's refusal was protected by the First Amendment; and (4) petitioner was not sufficiently apprised of the pertinency of the questions to the subject of the inquiry.

I.

The resolution establishing the House Committee on Un-American Activities is not invalid as an authorization for the use of compulsory process

Petitioner contends, first, that the resolution establishing the House Committee on Un-American Activities—Rule XI of the Rules of the House of Representatives as adopted by House Resolution 5, 83d Congress (*supra*, pp. 3–4)—is wholly invalid as an authorization for the use of compulsory process, not merely

[21] Watkins freely answered questions about himself. *Watkins* v. *United States*, 354 U. S. 178, 183–4.

for an inquiry into the field of education, but for any inquiry whatever (Pet. Br. 20–25).

A. This contention—which has the support of two of the dissenting judges below (Chief Judge Edgerton and Judge Bazelon (R. 304–305)), but not of the other two (Judges Fahy and Washington (R. 306–307))—proceeds on the assumption that this Court, in *Watkins,* 354 U. S. 178, held, in the words of Chief Judge Edgerton (R. 304), that "the Committee on Un-American Activities had no authority to compel testimony"—*i. e.,* on any subject whatever—"because it had no definite assignment from Congress." The argument is that this Court in *Watkins,* to use the expression of the majority opinion below (R. 292, 294), "struck down" the House Un-American Activities Committee's authorizing resolution as invalid. We submit, however, that the majority are correct in their conclusion that, while this Court on several grounds and "in no uncertain terms" "criticized the resolution creating the Committee" (R. 293), it did not invalidate it.

In the first place, as the majority note (R. 294), if this Court "had intended to strike down the resolution, it would have said so in so many words. It would not have left so vital an issue to inference or interpretation." For "[t]he far-reaching result of such a holding would be that the Committee, established by action of the entire House of Representatives, would be rendered helpless and would not even be able to summon a witness, much less have him testify" (*ibid.*). And "nowhere in the *Watkins*

opinion does the Court use language essential to effectuate [such a] result * * *" (*ibid.*).

In the second place, as the court further notes (R. 295), had this Court "struck down the resolution creating the Committee the matter would have been ended, without the further, extended discussion found in *Watkins*. We cannot assume the rest of the opinion to be, nor do we read it as, mere dictum."

Thirdly, as the opinion below also observes (R. 295–296), this Court "cited in *Watkins* a number of cases, both in [this] Court and in Courts of Appeals, bearing on convictions sustained under the same resolution," without any intimation that such cases should have been or could have been "decided by the simple process of voiding the resolution establishing the Committee."[22]

Fourthly, we agree with the majority below (R. 295) that "it is clear that [this] Court was familiar with the present case as it is specifically referred to in note 34 of the opinion in *Watkins* [354 U. S. at 200]. [This] Court certainly knew, therefore, that Barenblatt's conviction grew out of testimony taken under the same resolution." It is, accordingly, "reasonable to assume that, had the resolution under which both Watkins and Barenblatt were questioned been stricken in its entirety, this case would have been *reversed* on authority of *Watkins* rather than *remanded* for consideration 'in light of' that opinion" (R. 295; emphasis in the original).

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[22] A number of such cases are cited in footnote 5 of the majority opinion below, at R. 295.

And, finally, Mr. Justice Frankfurter's concurring opinion (354 U. S. at 216–217)—stating his understanding of the Court's opinion, in which he joined—does not indicate the holding to be that the Committee's charter was void or wholly incapable of supporting a contempt conviction.

All these considerations show, in our opinion, that *Watkins* did not invalidate the Committee's enabling resolution as an authorization for the use of the processes of subpoena.

B. Apart, moreover, from petitioner's mistaken interpretation of what *Watkins* held, there is no sound basis for his contention that the Committee's authorizing resolution "is so sweeping and indefinite" that "there can be no certainty any subject of investigation is one on which Congress actually desires information" (Pet. Br. 21). For, whatever justification there may be for criticism of the authorizing resolution *on its face* on grounds of vagueness and imprecision (cf. *Watkins*, 354 U. S. at 202), the resolution comes before the Court, not in its bare terms alone, but with the gloss of a lengthy legislative history—which shows beyond a doubt that there is one subject, above all others, which the House of Representatives has desired and does desire this Committee continuously to investigate and periodically to report on to it. That subject is Communism, in its various aspects and facets, and the menace posed by that system and ideology to American government and institutions.[23]

[23] On the general subject of the interpretation and validity of the charters of Congressional committees, see the Brief for the United States in *Flaxer* v. *United States*, No. 60, this Term,

The language of House Rule XI—authorizing the Committee on Un-American Activities "to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation"—is identical with the language of House Resolution 282, 75th Cong., 3d sess. (83 Cong. Rec. 7568), which, in 1938, created the Committee on Un-American activities as a special committee, popularly known as the Dies Committee. It is clear from the debates on that resolution (83 Cong. Rec. 7568–7586) that Congress was primarily concerned with two developments in this country. One was the activities of the German-American Bund in the United States, including the establishment of Nazi military camps for the purpose of recruiting and training young people who would pledge their allegiance to Germany rather than the United States (*id.*, pp. 7569, 7570, 7572, 7575, 7577, 7583, 7584). The other was the activities of the Communist Party, which was then as now believed to be dominated by another foreign power—the Soviet Union (*id.*, pp. 7571, 7573, 7577, 7583–7586). The

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at pp. 36–37, 38–40, 49–50; Brief for the United States in *Watkins* v. *United States*, Oct. Term 1956, No. 261, at pp. 28–30, 69–73; and Brief for the United States in *Emspak* v. *United States*, Oct. Term 1953, No. 67, at pp. 66–71, 78–95.

term "un-American propaganda activities" was meant to include, at the very least, "propaganda designed to overthrow our Government by force and violence" (*id.*, p. 7580) and also activities on the part of foreign governments, through group action or otherwise, to influence American public opinion in such a manner that domestic and external affairs would be affected (*id.*, pp. 7569, 7571, 7580–7581). The clear intent of the House was that Communist activities came within the scope of the resolution and were to be investigated.

The charter of the Committee was subsequently renewed five times by overwhelming majority votes.[24] In 1945, the Committee was made a standing committee of the House (91 Cong. Rec. 10, 15), and a year later its charter was embodied in the Legislative Reorganization Act of 1946 (60 Stat. 812, 828). Since that date the provisions of the Act relative to the Committee have at the commencement of each Congress been made a part of the House rules for that Congress,[25] and resolutions have from time to time been passed appropriating funds to enable the Com-

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[24] H. Res. 26, 76th Cong., 1st sess., 84 Cong. Rec. 1098 (vote: 344 to 35 (84 Cong. Rec. 1127–1128)); H. Res. 321, 76th Cong., 3d sess., 86 Cong. Rec. 532 (vote: 344 to 21 (86 Cong. Rec. 604–605)); H. Res. 90, 77th Cong., 1st sess., 87 Cong. Rec. 886 (vote: 354 to 6 (87 Cong. Rec. 899)); H. Res. 420, 77th Cong., 2d sess., 88 Cong. Rec. 2282 (vote: 331–46 (88 Cong. Rec. 2297)); H. Res. 65, 78th Cong., 1st sess., 89 Cong. Rec. 795 (vote: 302 to 94 (89 Cong. Rec. 809–810)).

[25] H. Res. 5, 80th Cong., 1st sess., 93 Cong. Rec. 38; H. Res. 5, 81st Cong., 1st sess., 95 Cong. Rec. 10; H. Res. 7, 82d Cong., 1st sess., 97 Cong. Rec. 17, 19; H. Res. 5, 83d Cong., 1st sess., 99 Cong. Rec. 15; H. Res. 5, 84th Cong., 1st sess., 101 Cong. Rec. 11.

mittee to continue its work.[26] It is clear from the debates preceding the adoption of these numerous resolutions that a desire on the part of the House that the Committee continue its investigations of Communism was the reason for the House's periodic renewal of the Committee's charter and its regular voting of appropriations to finance the Committee's work (84 Cong. Rec. 1101, 1107, 1109, 1111–1112, 1290–1291; 86 Cong. Rec. 575–577, 579, 582, 585–586, 589–591, 602–604; 87 Cong. Rec. 886–893, 895–898; 88 Cong. Rec. 2283, 2286, 2292, 2296; 89 Cong. Rec. 797, 798, 806, 809; 92 Cong. Rec. 5210, 5211, 5214–5215; 94 Cong. Rec. 2405–2409; 96 Cong. Rec. 3941–3944; 97 Cong. Rec. 1156–1159; 99 Cong. Rec. 1359–1361; 100 Cong. Rec. 2282–2286, 2288–2290, 2292–2293), and that the investigation was intended to extend to Communism wherever it existed.[27]

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[26] H. Res. 168, 79th Cong., 1st sess., 91 Cong. Rec. 1856, 1857 (providing for expenditures up to $50,000); H. Res. 624, 79th Cong., 2d sess., 92 Cong. Rec. 5209, 5224 (providing for further expenses up to $75,000); H. Res. 77, 80th Cong., 1st sess., 93 Cong. Rec. 699, 700 ($50,000); H. Res. 152, 80th Cong., 1st sess., 93 Cong. Rec. 3074 ($50,000); H. Res. 484, 80th Cong., 2d sess., 94 Cong. Rec. 2405, 2414 ($200,000); H. Res. 78, 81st Cong., 1st sess., 95 Cong. Rec. 1044, 1045 ($200,000); H. Res. 482, 81st Cong., 2d sess., 96 Cong. Rec. 3941, 3944 ($150,000); H. Res. 42, 82d Cong., 1st sess., 97 Cong. Rec. 1155, 1160 ($200,000); H. Res. 403, 82d Cong., 1st sess., 97 Cong. Rec. 12288 ($100,000); H. Res. 526, 82d Cong., 2d sess., 98 Cong. Rec. 2646 ($200,000); H. Res. 119, 83d Cong., 1st sess., 99 Cong. Rec. 1358–9, 1361–2 ($300,000); H. Res. 400, 83d Cong., 2d sess., 100 Cong. Rec. 2282, 2293–4 ($275,000). The vote for the appropriation in each instance was overwhelming.

[27] That an investigation into Communism was intended by Congress is also evidenced by the numerous recommendations of the Committee, over a period of years, specifically dealing

It is submitted, therefore, in the light of this "persuasive gloss of legislative history" (*United States* v. *Witkovich*, 353 U. S. 194, 199), that, however valid on the grounds of vagueness may be criticism of the Committee's authorizing resolution as authority for an inquiry into *other* fields or subjects, it is not open to such attack in this case.[28] The resolution, in other words, clearly authorized the Committee to inquire into the subject of Communism and Communist activities. To that extent, at the least, it cannot be said that there was "an absence of authority for any investigation" (Pet. Br. 21).

II.

The Committee was authorized to conduct by compulsory process an investigation of communism in the field of education

Petitioner next contends (Pet. 10–11; Pet. Br. 25–27) that the House of Representatives "did not authorize the Committee to conduct by compulsory proc-

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with Communism, and the subsequent action taken by Congress pursuant to such recommendations. See *Legislative Recommendations by House Committee on Un-American Activities; Subsequent Action Taken by Congress or Executive Agencies (A Research Study by Legislative Reference Service of the Library of Congress)*, Committee on Un-American Activities, House of Representatives, 85th Cong., 2d sess., June 1958, pp. 6–9, 11–24. See also footnote 57, *infra*, pp. 75–76.

[28] Just as a statute may be valid as applied to one set of facts and invalid as applied to another (*Federation of Labor* v. *McAdory*, 325 U. S. 450, 462; *Kansas City Southern Ry. Co.* v. *Anderson*, 233 U. S. 325; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Wynne*, 224 U. S. 354, 361; *Poindexter v. Greenhow*, 114 U. S. 270, 295), a resolution might be deemed objectionably vague as a source of authority for an investigation into certain areas but not as to others, which come clearly within its intended scope.

ess an investigation in the field of education" (Pet. Br. 25). Assuming (according to the argument) that *Watkins* did not hold the Committee's authorizing resolution to be totally invalid, that decision, when read together with *Sweezy* v. *New Hampshire*, 354 U. S. 234 (decided the same day as *Watkins*), establishes at least that the resolution did not authorize the Committee to inquire into "the field of education" (Pet. 10; Pet. Br. 25–26). The argument at this point is not that such an inquiry would be unconstitutional and thus beyond the power of the House to authorize its Committee to conduct. The contention, rather, is that the House never in fact authorized such an inquiry. For, according to petitioner, "[c]onsidering that an investigation of education * * * involves an area of particular significance under the First Amendment," it "can hardly be assumed" that the House "intended the Committee to invade this field" (Pet. Br. 26).

This contention, which has the support of all of the dissenting judges below (R. 305–306, 306–307),[29] is, we submit, untenable in the light of the Committee's his-

[29] The dissent of Judges Fahy and Washington was based on this ground alone (R. 306–307), they being of the view that it was "unnecessary here to go into the question whether *Watkins* holds the Committee to be without authority to compel testimony on any subject of inquiry" (R. 307). Judges Edgerton and Bazelon based their dissent primarily on the latter ground, *i. e.*, that the Committee's charter is wholly invalid as an authorization to compel testimony on any subject whatever (R. 304–305), but in addition expressed the view that reversal was in any event required on the narrower ground on which Judges Fahy and Washington rested their dissent (R. 305–306).

tory. The House of Representatives, having authorized its Committee on Un-American Activities to conduct inquiries into the general field of Communism, did not intend to carve out from that area Communism in education; on the contrary, it was the wish and intent of the House (as we have seen, *supra*, pp. 34–38) that the Committee extend its investigation into every area of the national interest upon which Communism has an impact. No exception was made for education. Our argument is not based merely upon a negative inference from the fact that the field of education is not excepted in the Committee's broad charter; there is strong positive evidence that the House specifically intended the Committee to pursue its inquiries into this field.

A. This Court's *Sweezy* decision does not require that the Committee's charter should be construed as excepting the field of education from the reach of the Committee's processes

Petitioner's view is that the *Watkins* decision, taken together with *Sweezy* v. *New Hampshire*, 354 U. S. 234, establishes at least that the Committee's charter did not authorize it to inquire into "the field of education" (Pet. 10; Pet. Br. 25–26). We submit, however, that *Sweezy* is distinguishable from this case in at least two decisive respects.

In the first place, the basic difficulty which the principal opinion in the *Sweezy* case[30] found with that conviction was that it was for refusing to answer questions by a committee of one man (the New

[30] *I. e.*, the opinion of Chief Justice Warren, in which Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Brennan joined.

Hampshire Attorney General), to whom the New Hampshire Legislature had delegated total and uncontrolled responsibility for conducting the inquiry which it had authorized, and for seeing to it that only such information as the Legislature desired, and nothing more, be sought through the use of the subpoena power (354 U. S. at 251–255).[21] Petitioner's conviction is not vulnerable to this criticism. Here, unlike *Sweezy*, the House of Representatives retained at all times responsibility for the actions of its Com-

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[21] In *Sweezy*, the New Hampshire Legislature authorized the State Attorney General, as a one-man legislative committee, to conduct an investigation to determine whether "subversive" persons (as defined by statute) were located in the State. The Attorney General was authorized to act on his own motion and on such information as in his judgment was reasonable or reliable. He was given the power of subpoena, but not the power to hold witnesses in contempt. Pursuant to this authorization, the Attorney General summoned Sweezy, interrogated him on various subjects, and, upon Sweezy's refusal to answer certain questions, filed a petition in the Superior Court of Merrimack County asking that the court propound the questions to the witness. The court, deeming the questions pertinent, summoned Sweezy as a witness, and, on his continued refusal to answer, adjudged him in contempt. The Legislature had no part in the process save for its initial general authorization to the Attorney General to conduct an investigation. (354 U. S. at 236–245)

Thus, as the principal opinion observed (354 U. S. at 254):

"* * * neither we nor the state courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the legislature wanted to be informed when it initiated this inquiry. The judiciary are thus placed in an untenable position. Lacking even the elementary fact that the legislature wants certain questions answered and recognizing that petitioner's constitutional rights are in jeopardy, we are asked to approve or disapprove his incarceration for contempt."

mittee, which could only report to its parent body and recommend action with respect to recalcitrant witnesses. Here, also unlike *Sweezy* (see fn. 31, *supra*, p. 41), the House itself cited petitioner for contempt and referred his case to the United States Attorney for prosecution. It took this action, furthermore, only after being fully apprised, through a documented committee report, of the circumstances surrounding the calling of petitioner as a witness, the nature of the inquiry in which the Committee was engaged, and the exact questions which he refused to answer. See *supra*, pp. 21–22, and *infra*, pp. 52–53.

Secondly, while the New Hampshire Attorney General's interrogation of Sweezy touched upon some of the philosophic aspects of Communism as an abstract body of thought—such as, for example, whether or not he advocated "Marxism" or espoused the theory of "dialectical materialism" (see 354 U. S. at 243–244)—the questions which he was convicted for refusing to answer related primarily to his connections and associations, not with the Communist Party, but with the *Progressive* Party, and persons with whom he was acquainted in that organization (see 354 U. S. at 239–244).[32] This is the aspect of the *Sweezy* case which

[32] The principal opinion points out that it was not clear from the record whether the New Hampshire Supreme Court, in affirming Sweezy's conviction, intended to include a question about Sweezy's "belief in Communism" among the questions with respect to which it affirmed, but that it was unnecessary, in the view which the Justices joining in that opinion took, to "resolve affirmatively" that that particular question "was or was not included in the decision by the State Supreme Court" (354 U. S. at 245).

was decisive for Justices Frankfurter and Harlan (see 354 U. S. at 264–267).[33] The Committee's inquiry in the case at bar, on the other hand, was concerned with the *Communist* Party's infiltration and penetration of the field of education, and the questions asked of petitioner were limited to his participation, as a graduate university student and teaching fellow, in Communist Party activities.[34]

This distinction between the Communist Party and the Progressive Party is vital. Whatever view one may have as to the character of the Progressive Party

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[33] Mr. Justice Frankfurter, after pointing out that Sweezy stated, in response to questions at the hearing, that he "did not know of any Communist interest in, connection with, influence over, activity in, or manipulation of the Progressive Party" (354 U. S. at 264), observed that (at 266):

"* * * Whatever, on the basis of massive proof and in the light of history, of which this Court may well take judicial notice, be the justification for not regarding the Communist Party as a conventional political party, no such justification has been afforded in regard to the Progressive Party. A foundation in fact and reason would have to be established far weightier than the intimations that appear in the record to warrant such a view of the Progressive Party. [Footnote reference omitted] This precludes the questioning that petitioner resisted in regard to that Party."

[34] Unlike the situation with respect to Sweezy, moreover, the questions petitioner refused to answer did not relate to teaching or the contents of classes. *Cf.* the following observation of the court below: "The inevitable result is that the purpose and nature of the inquiry was to determine *communist methods of infiltration* in the field of education. There is no indication of a congressional desire or attempt to examine curricula, content of text books, administration of schools, or criteria for employing and discharging teachers. Indeed, the committee's official report on this investigation negatives any such interpretation of the intent of Congress." (R. 281; emphasis added.)

as a legitimate political party, the Congress has the gravest of reasons for *not* considering the Communist Party as a conventional political party. "From information before its several Committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party façade, the Communist Party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our constitutional system." *American Communications Assn.* v. *Douds*, 339 U. S. 382, 424.[35] Its goal is *"to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate"* (*id.*, 425; italics in the original). It "purposes forcibly to recast our whole social and political structure after the Muscovite model of police-state dictatorship" (*ibid.*). It is "designed to undo the Declaration of Independence, the Constitution, and our Bill of Rights, and overturn our system of free, representative self-government" (*ibid.*). *"Violent and undemocratic means are the calculated and indispensable methods to attain [its] goal"* (339 U. S. at 429; italics in the original). It is "a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed" (at 432). Each member "pledges unconditional obedience to party authority.

[35] This and the quotations which follow are from the separate opinion of Mr. Justice Jackson, concurring in part and dissenting in part. The several quotations reflect what, in the Justice's view, the Congress could reasonably believe about the Communist Party, based upon evidence adduced before it and its committees (see 339 U. S. at 424, fn. 2).

Adherents are known by secret or code names. They constitute 'cells' in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded" (*ibid.*). It, moreover, *"alone among American parties past or present is dominated and controlled by a foreign government.* It is a satrap party which, to the threat of civil disorder, adds the threat of betrayal into alien hands" (at 427; italics in the original). See also Mr. Justice Frankfurter's reference (quoted in footnote 33, *supra*, p. 43) to the "massive proof" justifying "not regarding the Communist Party as a conventional political party." And compare *Dennis* v. *United States*, 341 U. S. 494, 563–566 (Mr. Justice Jackson, concurring); *infra*, pp. 55–61, 85–86.[36]

For these reasons, it is submitted that *Sweezy* is decisively distinguishable from the case at bar.

B. The House has affirmatively indicated that inquiry into Communism in education is within the Committee's charter

There is strong affirmative proof that the House of Representatives did not intend the Committee's inquiries to stop short of a proper inquiry into the extent of Communist infiltration into education.

1. Congress, at the time of petitioner's appearance,

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[36] See also *Osman* v. *Douds*, 339 U. S. 846; *Galvan* v. *Press*, 347 U. S. 522; *Harisiades* v. *Shaughnessy*, 342 U. S. 580; *Carlson* v. *Landon*, 342 U. S. 524; *Adler* v. *Board of Education*, 342 U. S. 485; *Garner* v. *Los Angeles Board*, 341 U. S. 716; *Lerner* v. *Casey*, 357 U. S. 468, 477–478; *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531 (C. A. D. C.), reversed on other grounds, 351 U. S. 115; *United States* v. *Dennis*, 183 F. 2d 201, 206, 212-213 (C. A. 2), affirmed, 341 U. S. 494; Internal Security Act of 1950, c. 1024, Section 2, 64 Stat. 987, 50 U. S. C. 781; Communist Control Act of 1954, c. 886, Section 2, 68 Stat. 775, 50 U. S. C. (Supp. V) 841.

had already taken action in accordance with the findings of the Committee in this area. Thus, as noted by the Court of Appeals in this case (R. 282), Congress, in 1952, pursuant to the Committee's recommendation that it should "[w]ithhold all Federal financial support from any educational institution which permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of government to the student body * * *," enacted Section 228 of the Veterans' Readjustment Assistance Act, 66 Stat. 667, 38 U. S. C. 933 (G. Ex. 9, pp. 144–5; R. 260–261). This section prohibits the payment by the Veterans Administration of any educational and training allowance to any otherwise eligible veteran who enrolls for any course in any educational institution which is listed by the Attorney General as totalitarian, Fascist, Communist, or subversive. See *infra*, pp. 64–65.

Moreover, even had there been no such affirmative action, it would be only reasonable to assume that Congress intended its committees' inquiries into Communism and Communist infiltration of various areas of the national life to extend, properly conducted, to the area of education. For, as the Court of Appeals also points out (R. 282), "American colleges and universities are holders of contracts with the Government to conduct a variety of research projects of far-reaching consequence to the national security." [37]

[37] See *infra*, pp. 66, 101–102, for statistics as to such research contracts, and pp. 62–66, 95–102, *infra*, for a discussion of other bases of a legitimate congressional concern with the problem of Communism in the field of education.

2. The House, in 1953, overwhelmingly voted funds to finance the Committee's work with full knowledge that the Committee had recently commenced an inquiry into Communism in education and was about to continue the inquiry. On February 24, 1953, the House, following an extended debate on the House floor in the course of which it was brought out that the Committee had recently commenced an inquiry into Communism in education and was about to resume it on a nation-wide scale, voted funds to the Committee. The date of this action has special significance in that it occurred a very short time (less than two months) following the House's most recent renewal of the Committee's charter,[38] and was on the literal eve of the commencement by the Committee, on February 25, 1953, of the series of public hearings which it held in connection with its investigation into Communism in education (*supra*, p. 7)—of which its interrogation of petitioner, some 16 months later (in June 1954), was an integral part (*supra*, pp. 17–21).

The occasion of the floor discussion was House Resolution 119, 83d Cong., 1st sess., which proposed that funds in an amount not to exceed $300,000 be appropriated to finance the current activities of the Committee (99 Cong. Rec. 1358–1359). Following the reading of the resolution by the Clerk, Representative Holifield inquired whether, "in view of the contro-

[38] This had occurred on January 3, 1953, at the beginning of the 83d Congress (*supra*, pp. 3–4).

versy that has arisen in regard to going into universities and colleges throughout the land and investigating them as to communism," it was "the purpose of this committee to use these funds for the purposes of going into the different college towns throughout the United States and calling public hearings and asking members of the faculty or of the local boards of regents and trustees to come before the committee and answer questions in a public way in regard to some alleged subversive activity" (99 Cong. Rec. 1359). Representative Halleck replied that it seemed to him "strange that every time the Committee on Un-American Activities starts out to ferret out Communists in this country a lot of people get disturbed about it" (*ibid.*). "I am as solicitous of the welfare of colleges and universities as anybody," Representative Halleck added, "but at the same time I think the House Committee on Un-American Activities has proved its worth" (*ibid.*).

Representative Kearney, the ranking majority member of the Committee present, said that he thought Representative Holifield was "going far afield in his ideas of what the Committee on Un-American Activities intends to do with reference to the investigation of communism in educational institutions," and added that the Committee intended to pursue its inquiries into communism "no matter where it be" (*ibid.*). Representative Walter, another member of the Committee, after further colloquy, said that he thought Representative Holifield "would be satisfied if he knew that there will be no witnesses called before that committee in its investigation of communism in

education except people that we know are now or have been Communists" (*ibid.*).

Following further colloquy, Representative Jackson, another Committee member, after reviewing some of the recent work of the Committee, said (99 Cong. Rec. 1360):

> So far as education is concerned, if the American educators, and if the gentlemen who are objecting to the investigation of communism and Communists in education, will recognize a valid distinction, I want to point out this is not a blunderbuss approach to the problem of communism in education. We are not interested in textbooks. We are not interested in the classroom operations of the universities. We are interested instead in finding out who the Communists are and what they are doing to further the Communist conspiracy. I may say in that connection that we have sworn testimony identifying individuals presently on the campuses of this country, men who have been identified under oath as one-time members of the Communist Party. Is there any Member of this body who would say we should not investigate this situation?

Representative Holifield replied that if "known Communists * * * exist[ed] in any of these schools," he thought it "entirely proper that they be brought before the committee and investigated" (*ibid.*). His only concern, he said, was that the Committee not "go into these college towns and investigate indiscriminately" (*ibid.*).

Representative Kearney then told the House that

the Committee had in the preceding week "heard three educators," "former members of the Communist Party," who had told the Committee that in their opinion "a Communist educator cannot be an objective pedagogue" and "is a menace to the educational system of this country" (*ibid.*). "We agree with that," Representative Kearney added, "and we are going to find the Communists in education and elsewhere throughout this country, if this body will go along and give us the funds we need to do the job" (*ibid.*).

Following further discussion (99 Cong. Rec. 1360–1361)—during which Representative Doyle, a fourth member of the Committee, reiterated the Committee's intention of pursuing its investigation of Communism into the field of education pursuant to its "assignment * * * to investigate subversive people and programs wherever they exist" (99 *id.* 1361)—a vote was taken on the resolution, which was overwhelmingly approved (99 *id.* 1361–1362).[39]

It is evident from this history that there is no basis whatever for the contention that the House never intended to authorize the Committee to carry its inquiries into Communism into the field of education. That the House did so authorize its Committee could not, we believe, be evidenced more plainly, short of an explicit authorization to that effect in the Committee's charter. The showing on this point, it should also be noted, does not consist merely of a "squeez[ing]" of "implied authority"

[39] The vote was 315 to 2, with 2 voting "present" and 113 not voting.

out of "repeated acquiescence by Congress in the Committee's inquiries" in this field (*Watkins* v. *United States*, 354 U. S. 178, 217 (Mr. Justice Frankfurter, concurring)). Rather, it is a showing of explicit authorization by the voting of funds to enable the Committee to pursue its investigations, following a full floor debate in the course of which the Committee's intention to extend its inquiries into the educational field was iterated and reiterated, and the desirability of such course extensively discussed.

3. Pursuant to its announced intention, the Committee, during the next several months of 1953, conducted an extensive series of hearings—which were in the main public and in the course of which it heard in excess of thirty witnesses from different colleges and universities throughout the country—on the subject of Communism in education.[40] On February 6, 1954, the Committee, in its annual report for the year 1953, made a full and detailed report to the House of its activities during the preceding year in connection with its investigation into, among other subjects, "Communist Methods of Infiltration (Education)."[41] Within three weeks thereafter, on February 25, 1954, the matter of funds for financing the Committee's work was again debated

[40] See Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., on *Communist Methods of Infiltration (Education)*, Parts 1–8.

[41] See Annual Report of the Committee on Un-American Activities for the Year 1953 (H. Rept. No. 1192, 83d Cong., 2d sess.), pp. 8–22. This report was received in evidence as Government Exhibit 9, and pertinent parts of it appear in the printed record at R. 241–261.

on the House floor (100 Cong. Rec. 2282–2294). Following extensive discussion, in the course of which Representative Velde, the Committee Chairman, reported on the work of the Committee during the preceding year (100 *id.* 2283–2284)—including its inquiry into Communism in "education" (100 *id.* 2284)—the House again voted the Committee substantial funds ($275,000) with which to carry on its work, the vote being again by an overwhelming margin (100 *id.* 2293–2294).[42]

4. Since the Committee's 1953–54 inquiry into Communism in education involved in this case, the House has twice renewed the Committee's charter—in January 1955 at the beginning of the 84th Congress (101 Cong. Rec. 11) and in January 1957 at the beginning of the 85th Congress (103 Cong. Rec. 47)—without on either occasion amending the charter so as to repudiate the Committee's interpretation of it as authorizing the inclusion of education within the scope of the Committee's investigative activities.

5. The very act of the House in citing petitioner for contempt, finally, constituted ratification by that body of the Committee's interpretation of its charter as authorizing it to pursue its inquiries into the field of education. For, as we have pointed out (*supra*, pp. 21–22), the Committee report reporting petitioner's contumacy to the House set forth in full the details of petitioner's defiance of the Committee, including the exact questions which he refused to answer and the context in which they were propounded. The House

[42] The vote was 364 to 1, with 4 voting "present" and 65 not voting.

was thus fully aware that the inquiry at which petitioner's recusancy occurred was an investigation of Communism in education. In voting to cite petitioner for contempt, the House again implicitly approved and ratified the Committee's own interpretation of the scope of its authorizing resolution.

III.

Petitioner had no right under the First Amendment to refuse to tell the Committee whether he was a member of the Communist Party

It is next argued (Pet. Br. 27–60) that "[t]he Committee's authority as here applied, to force petitioner to answer the questions recited in the indictment, violates the First Amendment" (Pet. Br. 27).[43] We submit that there is likewise no merit to this constitutional contention.

It should first be observed, in this connection, that petitioner virtually ignores the questions underlying the first two counts of the indictment—*i. e.*, whether he then was or ever had been a member of the Communist Party (R. 2)—and discusses the issues almost as if the only question on which the indictment was based was that underlying the fourth count, *i. e.*, whether he was, while at the University of Michigan, a member of the "Haldane Club of the Communist Party" (see Pet. Br. 28–29, 41–42, 54, 55, 56–57) (which he describes as a mere "'intellectual group, discussion group' of 8 or 10 graduate students" (Pet. Br. 28–29)). It is to be emphasized, however, (a) that the "Haldane Club" was a club *of the Commu-*

[43] As we have seen (*supra*, pp. 19–20), petitioner specifically disclaimed reliance on his Fifth Amendment privilege against self-incrimination (R. 224–226, 240).

nist Party"—an integral organizational unit of the Communist Party itself and not a mere campus club or group in which any graduate student was eligible for membership, Communists and non-Communists alike (see R. 203–204, 205, 209, 210, 216–217),[45] and (b) that, since petitioner received a general sentence on all counts of the indictment (R. 67), it is sufficient, to sustain this sentence, to uphold his conviction on any one of the counts. *Claassen* v. *United States*, 142 U. S. 140, 146–147; cf. *Hirabayashi* v. *United States*, 320 U. S. 81, 85, 105; *Pinkerton* v. *United States*, 328 U. S. 640, 641–642, n. 1; *United States* v. *Trenton Potteries*, 273 U. S. 392, 401–402. In short, for petitioner to prevail it is necessary for him to show, not merely that one or some of the questions underlying the indictment were improper,[46] but that all were improper. He must show that the Committee had no right to

[44] It is necessary to emphasize this because petitioner, after an initial reference to the club as "'The Haldane Club' of the Communist Party" (Pet. Br. 28), thereafter, omitting the qualifying phrase, speaks simply of the "Haldane Club" (Pet. Br. 29, 41, 54, 55).

[45] Crowley testified that the Haldane Club was "even more secret" than the "Neafus Club"—the latter being another Communist Party organization on the campus, open to those Party members who were undergraduates (see *supra*, pp. 17–18).

[46] We believe that all five of the questions underlying the indictment (see *supra*, p. 5) were proper as relevant to the Committee's inquiry into Communism in education. With respect to the fifth question, relating to petitioner's membership in the "University of Michigan Council of Arts, Sciences, and Professions" (R. 2, 238), see fn. 18, *supra*, p. 19. However, for the reasons stated in the text, it is unnecessary to consider the propriety of any of the questions except those relating to petitioner's past and present membership in the Communist Party.

compel him to divulge whether he then was or ever had been *a member of the Communist Party.*

A. A witness before a congressional committee conducting a proper inquiry into the nature and extent of Communist infiltration into an area with which Congress has a legitimate legislative concern has no right under the First Amendment to refuse to disclose whether he is or has been a member of the Communist Party

I. It certainly cannot be denied (as we pointed out in our brief in the *Watkins* case, No. 261, Oct. Term, 1956, p. 61; and see *id.*, pp. 61–64)—and petitioner does not appear to question—that Congress has general power to inquire into, and to legislate within its sphere with respect to, the subjects of Communism and the Communist Party. See, *e. g.*, *American Communications Assn.* v. *Douds*, 339 U. S. 382; *Osman* v. *Douds*, 339 U. S. 846; *Garner* v. *Los Angeles Board*, 341 U. S. 716; *Galvan* v. *Press*, 347 U. S. 522; *Harisiades* v. *Shaughnessy*, 342 U. S. 580; *Carlson* v. *Landon*, 342 U. S. 524; *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531 (C. A. D. C.), reversed on other grounds, 351 U. S. 115; *Dennis* v. *United States*, 341 U. S. 494; *Adler* v. *Board of Education*, 342 U. S. 485; *Lerner* v. *Casey*, 357 U. S. 468, 477–478.

This is not to say, as recognized by the court below (R. 285), that Congress has any "general power to inquire into political beliefs and associations." But it clearly does have the power to inquire into the nature, character, and activities of, the seriousness of the danger emanating from, and other aspects (including the number and identity of its members) of the particular organization known as the Communist Party of the United States. This is because there is—at the very least—the strongest reason to believe

that that organization, dominated and controlled by a foreign power, seeks, under the cloak and style of a domestic political party, to subvert and destroy the American form of government by force and violence and other unconstitutional means. See Mr. Justice Jackson's observations with respect to the Communist Party in his opinion in *American Communications Assn.* v. *Douds*, 339 U. S. 382, 424–433, excerpts from which are quoted at pp. 44–45, *supra*, and the same Justice's concurring opinion in *Dennis* v. *United States*, 341 U. S. 494, 562–566; see also Judge Learned Hand's remarks concerning the Party in his opinion for the Second Circuit in the *Dennis* case, 183 F. 2d 201, 206, 212–213, affirmed, 341 U. S. 494; cf. *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531, 562–573 (C. A. D. C.), reversed on other grounds, 351 U. S. 115; and see Internal Security Act of 1950, c. 1024, § 2, 64 Stat. 987, 50 U. S. C. 781; Communist Control Act of 1954, c. 886, § 2, 68 Stat. 775, 50 U. S. C. (Supp. V) 841.

In the latter Act—enacted less than two months following petitioner's appearance before the Committee in this case—Congress epitomized its reasons for not considering the Communist Party as simply "another political party." The pertinent passage of the Act sets forth so forcefully the reasons why Congress is justified in inquiring, through its properly constituted committees, into this organization's composition and activities that we quote it in full:

> The Congress finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact

an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. Its members have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike political parties, the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any

> available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. * * *

This formal expression by the Congress of its views respecting the Communist Party is manifestly entitled to great weight in any judicial appraisal of the validity, under the First Amendment, of a congressional committee's inquiry, in a proper investigation into the impact of Communism on a significant area of the national life, whether the witness (admittedly an individual who has been closely associated and identified with that area) is or has been a member of the Party.

The special nature of the Communist Party, the special dangers it represents, and its special and unlawful aims, justify inquiry into an individual's connection with that Party where other political queries would be inadmissible. This principle the Court has explicitly recognized. *Lerner* v. *Casey*, 357 U. S. 468, 477–478, and the other cases cited, *supra*, p. 55; see also the discussion of academic freedom, *infra*, pp. 82–86. It is too late in the twentieth century to treat Communist Party membership as if it were of the same type and order as membership in the Republican Party, Democratic Party, or the Socialist Party. The established fact is that Communist Party membership

is on a wholly different plane because the Communist Party is wholly different—and this Court has never held otherwise.

In particular, the Court has never held that Communist Party membership must always be equated with a normal political association, unless and until the Government proves a close connection between the particular individual and the advocacy of force and violence or other unlawful conduct. In criminal cases arising under the Smith Act, the Court has laid down stringent standards of individual guilt (*Yates* v. *United States,* 354 U. S. 298), but in the non-criminal field it has held that (in appropriate circumstances) knowing Communist Party membership can be sufficient, in and of itself, to warrant adverse governmental action. See the *Douds, Garner, Carlson, Galvan,* and *Lerner* decisions, *supra,* p. 55. At least where the consequences are not punitive, the Court has accepted conscious Party membership as itself a danger signal—justifying investigation, administrative sanctions, or other special treatment. The Communist Party is marked off from other groups by its unique character, unlawful objectives, and domination by a foreign power.

2. It is for these reasons that the lower courts have correctly upheld the power of Congress, in proper cases, to inquire whether a witness is or has been a member of the Communist Party. Congress cannot determine the impact of the Communist Party in a particular institution or area without discovering what and how many Communists were active there, and the activities they undertook.

"If Congress has power to inquire into the subjects of Communism and the Communist Party," as was said in *Barsky* v. *United States,* 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843—

> * * * it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. *Personnel is part of the subject.* [Emphasis added.]

See also *Lawson* v. *United States,* 176 F. 2d 49, 52–53 C. A. D. C.), certiorari denied, 339 U. S. 934; *United States* v. *Josephson,* 165 F. 2d 82, 90–92 (C. A. 2), certiorari denied, 333 U. S. 838; *Eisler* v. *United States,* 170 F. 2d 273 (C. A. D. C.), certiorari dismissed, 338 U. S. 883; *Marshall* v. *United States,* 176 F. 2d 473 (C. A. D. C.), certiorari denied, 339 U. S. 933; *Dennis* v. *United States,* 171 F. 2d 986 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *Sacher* v. *United States,* 252 F. 2d 828 (C. A. D. C.), reversed on other grounds, 356 U. S. 576.

Accepting the premise that compelled disclosure of affiliations may well inhibit or affect the open expression of views (cf. *National Association for the Advancement of Colored People* v. *Alabama,* 357 U. S. 449, 460–463), these decisions properly find that the balance weighs in favor of disclosure of Communist Party membership where Congress has a legitimate interest. On the one hand, the Party member's inhibited speech is, at least in substantial part, unlawful and unprotected by the Constitution, and to the

extent constitutionally protected it is often of a low order of value (*e. g.*, devious support of a foreign power against the interests of this country); moreover, the Party engages in *activities* (apart from the communication of unlawful ideas) leading to disruptive consequences detrimental to the body politic (*e. g.*, political strikes), and therefore unworthy of constitutional protection. On the other hand, the governmental interest in discovering Communist infiltration in significant American institutions is an important one; the discovery of these disruptive activities is both necessary and proper. See also *infra*, pp. 80–86, and the Brief for the United States in *Flaxer* v. *United States*, No. 60, this Term, at p. 45 *ff.*

B. The Committee had a valid legislative purpose in interrogating petitioner which outweighed his interest in non-disclosure

It remains to show that the Committee had a valid legislative purpose in questioning this petitioner, which outweighed any interest in keeping his possible Party membership undisclosed. *First*, we discuss Congress's legitimate interest in the problem of Communist infiltration in education. *Second*, we point out that petitioner's interrogation was properly connected with such an inquiry into Communist infiltration. *Third*, we show further that any interest in favor of non-disclosure is subordinate to the interests calling for answers by petitioner to the queries.

1. Congress has a legitimate interest in the problem of Communist infiltration of the field of education

That Congress had during the pertinent period (1953–54)—and of course still has—a vital and continuing interest in, and legitimate legislative concern

with, the problem of Communist infiltration in the field of education cannot, we submit, be denied. While education is a matter primarily of State and local concern, the long history in this country of federal enactments directly or indirectly subsidizing education at all levels shows that this subject is also a matter of vital concern to the Federal Government."

A brief survey of some of the more significant of the federal programs having an impact on the field of education—involving the annual expenditure of millions of dollars of federal funds, and directly affecting the nation's colleges and universities—will emphasize, we think, the magnitude of the congressional interest in this area. It will also make clear why it has been and continues to be a matter of grave concern to the Congress and its committees, particularly the House Committee on Un-American Activities, to be thoroughly informed with respect to whether and to what extent the faculties and administrative staffs of these institutions have been penetrated by persons who are members and subject to the discipline of the Communist Party. For brevity's sake, and because petitioner's teaching background has been at the college and university level, we limit our presentation mainly to those federal programs and expenditures primarily affecting the nation's colleges

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[47] The National Defense Education Act of 1958 (Public Law 85-864, approved September 2, 1958), authorizing substantial Federal expenditures in a broad program designed to strengthen the nation's educational system, particularly as regards the teaching of mathematics, the sciences, and modern foreign languages, is merely the latest, as will be seen, in a long series of federal enactments affecting the field of education.

and universities, and omit reference to the numerous programs and expenditures whose primary impact on education is at lower levels.[48]

Land-grant colleges and universities:[49] Each year, Congress appropriates large sums to the land-grant colleges and universities; in 1954–1955 and 1955–1956, these sums amounted to over five million dollars.

The off-duty education program for personnel of the armed forces on active duty; the tuition aid program: The United States Armed Forces Institute (USAFI) offers correspondence courses in a number of participating institutions to personnel of the armed services; and under the Tuition Aid Program servicemen enroll for off-duty courses, with the Government paying a large portion of the tuition.

The ROTC programs and the Navy Five Term College Program: The long-established ROTC programs of the armed services are well-known; the Navy also has a college program for officers with less than two years of college training.

The educational-assistance programs for World War II and Korean veterans: Under the Servicemen's Readjustment Act of 1944, 58 Stat. 284, and the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 663, the Federal Government subsidized

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[48] For an informative study of the details of Federal programs and expenditures affecting all levels of education, see Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), *passim*.

[49] In the Appendix, *infra*, pp. 95–102, we set out in greater detail the facts relating to the Federal Government's interest in, and aid to, each of the categories named in the text.

studies by very large numbers of veterans of World War II and the Korean hostilities. In the 1953–1954 school year, some 12,500 institutions of all types were involved in this program. From the program's beginning through the 1954–1955 school year, a total of some seventeen billion dollars was expended by the Federal Government.

It is significant that the 1952 Act incorporates the substance of one of the specific legislative recommendations of the House Committee on Un-American Activities. See R. 260–261. That Committee had recommended, in its report to the House of January 3, 1941, that Congress should "[w]ithhold all Federal financial support from any educational institution which permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of government to the student body of these educational institutions" (Legislative Recommendation No. 4, contained in H. Rept. No. 1, 77th Cong., 1st sess., p. 23; set forth in pertinent part at R. 260). Section 228 of the Veterans' Readjustment Assistance Act of 1952 (66 Stat. 667; 38 U. S. C. 983) provided that "[t]he Administrator [of Veterans' Affairs] shall not approve the enrollment of, or payment of an education and training allowance to, any eligible veteran in any course in an educational institution or training establishment while it is listed by the Attorney General under section 3 of part III of Executive Order 9835, as amended." The cited section of Executive Order 9835 (12 F. R. 1938)—since

superseded—required the Department of Justice to keep the Loyalty Review Board (under the former loyalty-security program for government employees) currently furnished with the names of foreign or domestic organizations, associations, or groups of persons which the Attorney General, after appropriate investigation and determination, designated as "totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means."

The State Department's educational exchange programs: The State Department conducts the International Educational Exchange program (providing for exchanges with foreign students, etc.) and the program of Inter-University Contracts (aid by American universities to foreign institutions).

Income tax deductions for contributions to colleges and universities: The Internal Revenue Code authorizes deductions for contributions to educational institutions. This provision constitutes an indirect federal subsidization of these educational institutions in a sum amounting annually to many millions of dollars. It is of course within the power of Congress to limit this subsidy by amendatory legislation. This clause of the tax laws is thus another important basis of congressional interest in the problem of the infiltration of the teaching staffs of the institutions sub-

sidized by persons who are under the discipline of the Communist Party.[50]

University research programs under government contracts: For some years, the Federal Government has contracted widely for the use of research facilities of American colleges and universities. Among the main agencies making such contracts are the Department of Defense, the Atomic Energy Commission, and the National Science Foundation; in recent years, their annual contracts have amounted to over $150,000,000.

The significance of these Government-subsidized research programs in measuring the extent of Congress' legitimate concern with the problem of Communism in education is clear, and was specifically noted by the Court of Appeals in this case. "American colleges and universities," the court observed, "are holders of contracts with the Government to conduct a variety of research projects of far-reaching consequence to the national security" (R. 282). It would be intolerable, for example, for research personnel at a university engaged in an atomic research study under a government contract, if their work required that they be made privy to classified information, to

[50] Cf. Section 11 (a) of the Internal Security Act of 1950 (50 U. S. C. 790 (a)), providing that, "[n]otwithstanding any other provision of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under [the Act as a Communist-action or Communist-front organization], or (2) there is in effect a final order of the [Subversive Activities Control] Board requiring such organization to register under [the Act as such an organization]."

be permitted to undertake their studies without security clearance. Congress, through its committees, has an interest in inquiring into whether universities having such government research contracts have Communist Party members on their research staffs and to what extent the clearance procedures are effective.

In this connection, it is significant that one of the witnesses who appeared before the House Un-American Activities Committee during the same series of hearings as that at which petitioner appeared—an admitted former Communist—testified that he worked on two classified projects while a Party member on the faculty of a leading educational institution, one for the Office of Scientific Research and Development, the other for the Navy Ordnance Bureau (Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., on *Communist Methods of Infiltration* (*Education—Part 3*), April 21 and 22, 1953, pp. 1046, 1049–1050, 1057). This witness further testified that shortly following his work on those two projects he worked for approximately a year, from some time "about 1944" to "late 1945," on the "highly classified" "Manhattan project" (*id.*, pp. 1050, 1057). The record does not clearly indicate whether he was still a Party member when he commenced his work on the latter project or whether he had left the Party just prior thereto. He testified that he quit the Party "around 1944" (*id.*, p. 1047). He was told, he said, that he had been "cleared to work on" the Manhattan project, and he "filled out regular forms" in this connection, but none of the

forms asked any questions about membership in the Communist Party (*id.*, p. 1050).

Another witness, likewise a self-confessed former member of the Communist Party, admitted to the Committee that, as a teacher at another university and while a Party member, he had, during World War II, worked on another "classified project", contracted for by the Office of Scientific Research and Development (Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., on *Communist Methods of Infiltration* (*Education—Part 5*), April 29, May 19, 26, 27 and 28, 1953, pp. 1538–1539, 1556–1557). He "presume[d]" that he "must have been cleared" for this work, but no one ever asked him whether he was a Communist and he did not volunteer the information (*id.*, p. 1557). The only thing he could recall in connection with the matter of clearance was "a form whose character I don't recollect that I signed" (*ibid.*).[51]

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[51] Another witness, who refused to state (on the basis of his constitutional privilege against self-incrimination) whether he had ever been a member of the Communist Party, testified that, as a graduate student with a research assistantship at a leading university, he had once worked on a research project in quantum mechanics and theoretical physics under a contract between the university and the Office of Naval Research (Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., on *Communist Methods of Infiltration* (*Education—Part 3*), April 21 and 22, 1953, pp. 1036–1038).

See also *Communist Methods of Infiltration* (*Education—Part 5*), pp. 1568–1569, 1573–1576, for similar testimony by another university teacher, who refused on grounds of privilege to state whether he had ever been a member of the Communist Party. And see *id.*, Part 1, pp. 63–64, 70, 87–88; Part 2, 182–

Such testimony supports our position that Congress, by virtue of the extensive Government-subsidized contract research programs (among other reasons), has a vital and legitimate concern with the problem of Communism in education, and also tends to show that the Committee, contrary to petitioner's arguments (Pet. Br. 29–49), in the main focused its inquiry on those aspects of the problem as to which the legitimacy of that concern is most apparent.

2. The Committee's questions to petitioner were related to a legitimate legislative inquiry into Communist infiltration into education

(*a*) Petitioner contends (Pet. Br. 51–52) that the Committee's "entire investigation, or at the very least the interrogation of petitioner and the section of the investigation of which it was a part, had as its sole purpose 'to expose for the sake of exposure,' and that it therefore did not serve a permissible legislative purpose" (Pet. Br. 51). He cites, as proof of his allegation that the Committee's sole purpose was to expose, a sentence in the Committee's 1954 *Annual Report* (H. Rept. No. 57, 84th Cong., 1st sess. (G. Ex. 10)) in which it was stated that "[t]he 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (R. 262). He relies (Pet. Br. 51) on this Court's observation in *Watkins* that it had "no doubt that there is no congressional power to expose for the sake of exposure" (354 U. S. at 200).

133, 136–137, 139–141, 146; 225–227, 237; Part 3, 979–980, 981–986; 1015–1016.

However, the very passage of the *Watkins* opinion which contains this observation of the Court goes on to state (*ibid.*):

> * * * The public is, of course, entitled to be informed concerning the workings of its government. [Footnote reference omitted.] That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals. *But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.* [Emphasis added.]

Then, in a footnote reference, the Court adds (354 U. S. at 200, fn. 34):

> Compare the treatment of this point in *Barenblatt* v. *United States*, 240 F. 2d 875, 880–881 [and other cited cases].

This Court thus pointed to the treatment of this subject by the court below in its prior opinion in this case (which opinion the court incorporates by reference in its post-remand opinion; see R. 303).[52]

The court below, pointing out that the statement in the Committee's 1954 report on which petitioner relies was "in context, * * * part of an extended discussion of the whole activity of this committee and cannot be regarded as a statement of the sole or primary objec-

[52] This issue is not a point of difference between the majority opinion below and either of the dissenting opinions.

tive" (R. 279), concluded that "[a] reading of the full report indicates that the primary purposes of the inquiry were in aid of legislative processes" (*ibid.*). "Examination of the report," the court observed, "shows that legislative recommendations were made by the committee '* * * based upon investigations and hearings, in the year, 1954'" (*ibid*).[53] "It is unnecessary for present purposes," the court continued, "to comment on those recommendations except to say that they called for significant legislation, and illustrate that the committee did in fact recommend legislation based upon investigations and hearings in 1954, perhaps including the very hearing at which appellant testified. Apparently 'exposure,' if a purpose of the hearing in question, was not the primary purpose" (*ibid.*).

The Committee "was investigating communist infiltration in the field of education," the court concluded, "and did so pursuant to its duty to investigate the extent, character, and objects of un-American propaganda activities in the United States, and all other questions related thereto that would aid Congress in its legislative function. Taking this into consideration, together with the statement of the Chairman at the time the inquiry was inaugurated in February 1953,[54] as well as the statement of the committee counsel on the morning appellant [petitioner] appeared to

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[53] The part of the report (in evidence as G. Ex. 10) referred to by the court appears at pp. 22–23.

[54] The Chairman's statement appears at R. 76–79 and, in addition, at R. 285–288 as an appendix to the court's opinion. It is summarized at pp. 7–8, *supra*.

testify," we conclude that the [Committee's] dominant purpose in examining appellant was to acquire information which it regarded as useful in formulating legislative recommendations. This is a more valid appraisal than would result from concentrating on one isolated statement in the Annual Report. So long as competent evidence establishes a substantial legislative purpose in calling a witness before a congressional committee, and in its examination of him, we will not balance this purpose against other motivations. Once it is proven that the committee felt induced to call a witness in order to acquire information in aid of legislative processes, we think our limited function is exhausted" (R. 279–280).

As further indication that the Committee had a valid legislative purpose in interrogating petitioner, there is the statement of Committee member Doyle (made immediately following petitioner's refusals to answer and with the concurrence of Chairman Velde) that (R. 240; *supra*, p. 20):

> * * * the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, * * * and I would like the record of this hearing of this committee to especially show * * * that this witness [petitioner] and these other witnesses could help us in line with our * * * responsibility to have hearings with reference to recommendations for legislation in this area * * *.

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[55] A footnote reference quoting the committee counsel's statement is omitted. The statement appears at p. 17, *supra*.

To this statement the Chairman added that, on the basis of information in the Committee's files, it was clear that (*ibid.*; *supra*, pp. 20–21):

> * * * the witness [petitioner] has information about Communist activities in the United States of America, particularly while he attended the University of Michigan * * * which * * * would be very valuable to this committee and its work.

Since "the primary purposes of the inquiry were in aid of legislative processes," as the court below remarked (R. 279) and as the record as a whole indicates, the fact that an incidental, coexistent purpose may have been to "demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (*supra*, p. 69) did not render the questions illegitimate, so as to justify petitioner's refusal to answer.

(*b*) As we pointed out in our *Watkins* brief (No. 261, Oct. Term, 1956), pp. 29–30, the courts have been mindful that an inquiry need not be restricted to those facts which prove the need for new legislation or for modification of existing laws; nor is it limited to the precise area which Congress has power to regulate or prohibit. The power to investigate is almost always broader than the substantive authority which may eventually be exerted by the investigating agency, for not until the whole region of facts has been canvassed can it be determined where the definite boundaries of regulation should be drawn. It is just as important for Congress to be informed of facts which show pro-

posed or possible legislation to be undesirable or unnecessary, as it is for it to know the circumstances calling for affirmative action. In many areas, such as those impinging on freedom of speech or interstate commerce, Congress' power to legislate may even depend upon the existence or nonexistence of facts which can be shown only through a legislative inquest. Judicial inquiry into a committee's "legislative purpose" must therefore not be restrictive or hostile, but must take account both of the powers of Congress and of its pressing need to inform itself broadly. The latitude is necessarily wide. As was stated in *Townsend* v. *United States,* 95 F. 2d 352, 361 (C. A. D. C.), certiorari denied, 303 U. S. 664:

> A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress. *McGrain* v. *Daugherty,* 273 U. S. 135 * * *. A judicial inquiry relates to a *case,* and the evidence to be admissible must be measured by the narrow limits of the pleadings. A legislative inquiry anticipates *all possible cases* which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad. [Emphasis in the original.] [56]

Applying these principles, the courts have held it immaterial that a committee has proposed little legislation; the power to conduct a hearing is not meas-

[56] "Clearly," as was observed in *United States* v. *Josephson,* 165 F. 2d 82, 92–93 (C. A. 2), certiorari denied, 333 U. S. 838, "the Congressional power to investigate is as flexible as its power to legislate, once the latter power is established."

ured by recommendations for legislation, or their absence. *Townsend* v. *United States, supra,* 95 F. 2d at 355; *United States* v. *Josephson, supra,* 165 F. 2d at 89.[37] Similarly, the possibility that invalid as well

[37] This is not to suggest that the Committee on Un-American Activities has proposed little legislation. On the contrary, it has proposed a great deal of legislation, much of which has subsequently been enacted. For a complete listing of the Committee's recommendations and the subsequent action taken by Congress, see *Legislative Recommendations by House Committee on Un-American Activities; Subsequent Action Taken by Congress or Executive Agencies* (*A Research Study by Legislative Reference Service of the Library of Congress*), Committee on Un-American Activities, House of Representatives, 85th Cong., 2d sess., June 1958. In addition to legislative action, the study reveals that "executive agencies have put into effect policies, orders, or regulations relating to 13 recommendations by the committee" (*id.*, p. 2).

As noted in its Annual Report for the year 1954, the Committee over its sixteen years of existence "made numerous recommendations for the enactment of new legislation or the strengthening of existing laws dealing with subversive activities" (G. Ex. 10, p. 1). H. Rept. No. 57, 84th Cong., 1st sess. (G. Ex. 10, R. 24) (excerpts from this report appear in the printed record at R. 261–267). "It is worthy of note," states this report, "that at the commencement of 1954 all but 8 of the committee's 47 recommendations had been favorably acted upon by Congress or the executive branch" (R. 262). In large part as a result of the Committee's investigations and recommendations, the Internal Security Act of 1950 (64 Stat. 987) was enacted (G. Ex. 10, p. 2). (For a list of the recommendations of the Committee prior to 1953 and the action taken by Congress or executive agencies on such recommendations, see *Annual Reports of the Committee on Un-American Activities for the year 1953*, pp. 136–143, 144–156 (H. Rept. No. 1192, 83d Cong., 2d sess., G. Ex. 9, R. 24)). In 1954, pursuant to recommendations of the Committee (G. Ex. 10, pp. 2, 22), Congress passed legislation designed to break Communist control over certain labor unions (Communist Control Act of 1954, Sections 6, 10, 68 Stat. 775, 777, 778–780, amending the Internal Secu-

as valid legislation may result does not limit the power of inquiry. *Barsky* v. *United States, supra,* 167 F. 2d at 245; *United States* v. *Josephson, supra,* 165 F. 2d at 91. It is sufficient that some valid legislation could ensue from an inquiry. *McGrain* v. *Daugherty,* 273 U. S. 135, 177; *Sinclair* v. *United States,* 279 U. S. 263, 295; *Barsky* v. *United States, supra,* 167 F. 2d at 245. See also Brief for the United States in *Flaxer* v. *United States,* No. 60, this Term, at pp. 38–40, 49–50.

(*c*) Petitioner also argues (Pet. Br. 29–42) that the "articulated purpose and focus" of the Committee's inquiry was "the phase of the Communist Party" having to do with "thought, discussion and expression on social, political, and economic issues" (Pet. Br. 29, 30), and concludes (Pet. Br. 42–49) that the Committee thereby tended to cause "inhibition of all non-conformist expression" (Pet. Br. 42), "interference with freedom of association and conscience" (Pet. Br. 44), and "interference with [the] right [of teachers and others] to participate in [the] medium of expression" (Pet. Br. 47). We cannot agree, however, with the premise of this argument—that the "articulated purpose and focus" of the Committee's inquiry was merely the Communist Party's ideological influence on thought, discussion, and ex-

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rity Act of 1950), provided for the granting of immunity to certain witnesses appearing before congressional committees and grand juries (68 Stat. 745, amending 18 U. S. C. 3486) (see *Ullman* v. *United States,* 350 U. S. 422), and increased the penalty for peacetime espionage to death or imprisonment for any term of years or for life (Espionage and Sabotage Act of 1954, § 201, 68 Stat. 1216, 1219, amending 18 U. S. C. 794).

pression. The Committee was investigating the Party as an agency of a foreign government dedicated to the ultimate overthrow of our government by unlawful means.

Petitioner attempts to support his statement by a number of selected excerpts from the Committee Chairman's opening statement at the beginning of the hearings (Br. 29–30), the Committee's 1953 Annual Report in which it reported on the first phase of its inquiry into Communism in education (Br. 30–31), and the hearings themselves (Br. 32–42). But if the excerpts are examined in context, they fall far short of establishing that the "articulated purpose and focus" of the inquiry was the mere ideology of the Communist Party or the views it has taken on various public issues. Surely, for example, the two statements made by the Committee Chairman in his opening statement which petitioner cites in support of his thesis (Br. 29–30)—that "[t]he committee was greatly concerned with the evidence developed in the Hollywood hearings with respect to the type of 'thought control' practiced by the Communist Party upon its members" (R. 79), and that "[t]he committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession" (R. 79)—lend no support to the thesis. The undeviating adherence to the Party line on all issues on which it takes a stand, which the Party demands of its members, is simply one aspect of that Party discipline which is so well known a

Party characteristic. Any thoroughgoing study of the Party's infiltration and penetration of a given field could reasonably be expected to include this phase of the Party's character. Read in its entirety (R. 76–79), the Committee Chairman's opening statement—which we have summarized at pp. 7–8, *supra*—is an entirely unexceptionable statement of the proposed bounds of a legitimate public inquiry. It includes, as we have seen, the following significant statement, which strikes the keynote of the nature of the inquiry which was about to be undertaken (R. 77):

> The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field.

The excerpts from the Committee's 1953 Annual Report on which petitioner relies (Pet. Br. 30–31) are no more probative of his thesis. The fact, for example, that the Committee report quotes witness Davis' account of why he "first joined the Communist Party and the reasons why he left it" (R. 244)—in which Davis reviewed the "ideological" considerations which moved him to join the Party (R. 244–245)—is plainly a weak reed. Davis, as the lead-off witness at the hearings, had given a detailed account of how the Communist Party operated in the campus cell of which he was a member (see *supra*, pp. 9–15). It was only natural, therefore, for the Committee report to relate, in Davis' own words, how

he happened to join the Party. But this hardly supports the assertion that the Committee's "articulated purpose and focus" of inquiry was in the realm of mere ideology. The same considerations apply to petitioner's reliance (Pet. Br. 31) on the fact that the Committee report, in giving the background of Daniel Boorstin, another cooperative committee witness, relates that prior to his joining the Communist Party he was a member of a "Marxist study group" at Oxford, where the Party's stand "against the Nazis" appealed to him (R. 246–247).

Similarly, the isolated excerpts from the record of the hearings themselves, which petitioner cites (Pet. Br. 32–42)—excerpts from a transcript covering hundreds of pages and recording the testimony of over thirty witnesses—fail, we submit, to support his contention. For more representative illustrations of the type of information the Committee was interested in and the kind of questions it asked, see *supra*, pp. 9–18, 67–68.

Petitioner refers (Pet. Br. 37–41) to the Committee's "compulsion [of witnesses who admitted their own Party membership] to name others" (Pet. Br. 37) as his final proof that the Committee's "articulated purpose and focus" of inquiry lay in the realm of "belief and opinion" (Pet. Br. 37). But these queries as to Communist colleagues do not show a concentration on mere beliefs; rather, the questions indicate a concern with the *activity* and *conduct* of Communist groups or units. Moreover, we have previously shown that the First Amendment confers no right on a witness, at a proper inquiry into Commu-

nist infiltration of an area with which Congress has a legitimate legislative concern, to refuse to disclose whether he is or has been a member of the Communist Party (*supra*, pp. 55–61; see also *infra*, pp. 81–86). *A fortiori*, a witness has no right under that Amendment to refuse to identify others in the movement known to him to have been Party members—since "Personnel is part of the subject" (*Barsky, supra*, 167 F. 2d at 246).

Finally, petitioner complains that "[t]he investigation was not directed at incitement or instigation of unlawful action to change our form of government," and indicates that "even as philosophical abstractions, force and violence were not a focus of thought or discussion in the groups to which the witnesses belonged" (Pet. Br. 42). But, as we have already pointed out (*supra*, pp. 73–76), the Committee's inquiry into Communism in education was not required to be limited to those aspects of the Party relating to its advocacy of forcible overthrow of this Government. The Committee was not conducting a Smith Act trial. It was inquiring into infiltration of the field of education by the extraordinary entity known as the Communist Party. The Communist Party's immediate activities in education, as in other fields, are not limited to advocacy of overthrow of the government. But, as Congress and this Court have recognized, the Party is nevertheless a real danger because its immediate goals are always pursued for the advantage of a foreign power and the ultimate end of unlawful overthrow. It is such continuous operation of Party units and adherents as Party

agents which creates an injury, not solely the advocacy by them of unlawful methods. It is wholly unrealistic to suggest, as petitioner apparently does, that because the conspiratorial aspects of the Communist Party should properly be the main focus of inquiry the "intellectual" or "ideological" aspects of that conspiracy must be forbidden territory—even to touch upon which renders the entire inquiry invalid as an illicit invasion of constitutionally protected freedoms. In the language of the court below (R. 284–285), "Whether the Communist Party embraces not only conspiratorial groups but intellectual discussion groups as well, the relationship between them, the group most prevalent, and the extent to which an individual might participate in the activities of each, whether such groups operate within or are connected with public educational institutions, place the questions asked appellant [petitioner] clearly within the pale of valid inquiry."

3. Petitioner's interest in nondisclosure is subordinate to the Congressional interest

We are mindful of this Court's statements that when a committee of Congress "force[s] revelations concern[ing] matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous," and that "[t]he First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking" (*Watkins*, 354 U. S. 178, 197). But, on the other hand, the Court also pointed out that "despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries

are barred" (*id.* at 198). It is where the investigation is "unrelated to any legislative purpose" or where there is a "mere semblance of legislative purpose" (*ibid.*) that the compulsion to testify will not be judicially sanctioned. As we have shown, this inquiry did not fall into the latter category of investigations without a legitimate legislative purpose. Accordingly, petitioner's interest in nondisclosure must be subordinated.

(*a*) Petitioner's arguments in favor of the dominance of his interest in nondisclosure have already been answered. *Supra*, p. 55 *ff.* We have stressed that the Congressional and Committee interest in Communist infiltration into higher education was wholly legitimate; that the particular questions asked petitioner related to membership in the Communist Party and not to beliefs or opinions; and that membership in that Party is and was a proper subject of inquiry because of the Party's nature, structure, and objectives. In these circumstances, any inhibition on political or social expression resulting from compulsion to answer the questions is more than counterbalanced by the greater interest warranting disclosure.[58]

(*b*) (*1*) The brief of the American Association of University Professors, as *amicus curiae*, criticizes the Committee's interrogation of petitioner as having

[58] It goes without saying that in *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449, the interests in favor of nondisclosure were far weightier, and those favoring compulsory disclosure were far less substantial. See also *supra*, pp. 60–61, and Brief for the United States in *Flaxer* v. *United States*, No. 60, this Term, at pp. 57–58.

"unjustifiably infringed his freedom as a member of the academic community" and as having "thereby invaded the autonomy which is necessary to colleges and universities" (p. 13 *ff.*). At the heart of the *amicus'* argument, however, lie several unacceptable assumptions, which make invalid its claim that there has been here an unconstitutional abridgment of academic freedom.

The first untenable assumption is that the Communist Party of the United States is—and the Congress and its committees have no reason or justification for treating it otherwise than—merely another political party. Thus, the *amicus* refers to the "pall of suspicion" which is cast on a teacher when he is called before a legislative committee and "asked under penalty of contempt to name his political associations" (p. 19).[20] But the questions which petitioner resisted, as we have been at pains to point out, related to his membership in the *Communist Party*. And Congress and its committees, as we have seen (*supra*, p. 55 *ff.*), were thoroughly justified in regarding this organization as something far different from just another political party.

Second, the Association assumes that petitioner was questioned concerning his beliefs, his studies, or his teaching (see Br. 13 *ff.*, 26). But we have emphasized that the questions related to Communist Party *membership*, and not to beliefs or opinions. Queries as

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[20] Compare the *amicus'* apparent reference to the Haldane Club, of which petitioner was a member, as simply a University of Michigan "campus organization" (Br. 21)—on which see *supra*, pp. 53–54.

to such membership cannot be equated with the investigation into beliefs which the Association is really challenging.

Third, the Association departs from the facts of this particular case to indict the Committee (and other committees) as a whole, and to excuse this petitioner from answering because other witnesses have been asked other types of questions. The theme of the *amicus* brief is not this particular inquiry but the entire complex of legislative inquiries into education. We submit, however, that the basic principles of American law require that if disclosure is warranted in this case it should not be barred because disclosure may have been unwarranted in other cases.

The fourth questionable premise is that education is a "special" domain to which "special considerations"—applicable to no other area of national affairs—must govern in any judicial consideration of the congressional "power to investigate Communism" and questions arising therefrom (Br. 25). But, as observed by the court below (R. 281–282):

> While it is true * * * that Congress has broader powers to enact legislation in the field of labor than it does in the field of education, it is not true that persons who incidentally happen to be teachers have greater immunity from inquiry into their activities than do labor leaders and screen writers, when those activities relate to matters which are a legitimate concern of the Congress.

Fifth, *amicus* incorrectly assumes that all the requirements of academic freedom have constitutional

status. A basic postulate of its brief is that whatever advances academic freedom necessarily has the protection of the First Amendment. Academic freedom, however, can and does go beyond federal constitutional protections. One can surely favor the widest limits of freedom for teachers without asserting that those limits are coterminous with limits *required* by the Constitution.

(*2*) The Court may be interested in another view than *amicus'* of the true nature of responsible academic freedom. This is found in the 1953 statement by its sister organization, the Association of American Universities, on *The Rights and Responsibilities of Universities and Their Faculties* (R. 251–259). Stating that it "share[d] the profound concern of the American people at the existence of an international conspiracy whose goal is the destruction of our cherished institutions," and noting that a characteristic of this system was "thought control—the dictation of doctrines which must be accepted and taught by all party members," it held that "[n]o person who accepts or advocates such principles and methods has any place in a university," and that, "[s]ince present membership in the Communist Party requires the acceptance of these principles and methods, such membership extinguishes the right to a university position" (R. 258). Cf. *Beilan* v. *Board of Education,* 357 U. S. 399, 416 (Justices Douglas and Black, dissenting).

Another pertinent statement on the impact on academic freedom of the issues raised by the instant case is that by Lewis Webster Jones, former President of

Rutgers University, on the occasion of the dismissal of two professors because of their refusal to answer a congressional committee's questions concerning their Communist Party membership (99 Cong. Rec. A546):

> * * * The questions [which the professors] refused to answer did not relate to their opinions, but to their membership in the Communist Party. Such membership is not compatible with the freedom of thought and inquiry on which American teaching and research are based. *It is no invasion of that freedom, but a necessary measure of protection of the freedom of all of us, to seek to determine whether teachers and others in positions of trust are committed to the discipline and program of the Communist Party.* * * * [Emphasis added.]

"The Communist Party is not a political party like any other," the statement of President Jones continues, but rather (*ibid.*)—

> * * * a secret, conspiratorial organization imposing on its members a discipline and a regimentation of thought quite alien to the normal political parties of a democracy. * * *

For this reason, "[t]he public has the right, through its legally constituted representatives, to inquire into the Communist Party membership of individuals," and "[p]ublic investigation of the universities" (*ibid.*)—

> * * * implies no invasion of academic independence.

IV.

There is no foundation for petitioner's claim that his conviction must be reversed because he was not sufficiently apprised of the pertinency of the questions to the subject of the inquiry

Petitioner's final contention (Pet. Br. 60–63) is that his conviction "must be reversed because the Committee did not clarify for him either the subject of the investigation or the pertinence thereto of the" questions which he refused to answer (Pet. Br. 60). This argument is without merit; the case is plainly distinguishable on this score from *Watkins* v. *United States*, 354 U. S. 178, upon which the contention rests.[60]

Watkins held that, because it is of the essence of the offense defined by 2 U. S. C. 192 that the question or questions which the witness refused to answer be "pertinent to" the subject under inquiry by the committee, due process demands that, "[*u*]*nless the subject matter has been made to appear with undisputable clarity*" (from the totality of the circumstances attending the asking of the questions, including the terms of the committee's authorizing resolution), and "*upon objection of the witness on grounds of pertinency*," he be clearly apprised, at the time his answers are demanded, "what the topic under inquiry is and the connective reasoning whereby the precise questions asked relate to it" (354 U. S. at 214–215; emphasis added).[61]

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[60] The instant contention was not adopted by any of the judges of the court below.

[61] The importance of the requirement that there be a specific objection by the witness on grounds of pertinency is emphasized by the fact that in *Watkins* a footnote reading "Cf. *United States* v. *Kamin*, 136 F. Supp. 791, 800" is appended to the

Thus, at the heart of the *Watkins* holding is the requirement that the witness, in order successfully to defend against a charge of willful refusal to answer questions, must have raised the issue of lack of pertinency, by appropriate objection, at the time he was called upon to answer the questions. And this, clearly, is no mere technical requirement, but rather one rooted in recognition of the need of fairness as between the witness and the committee. For the purpose of the requirement is to give the committee the opportunity to explain to the witness the logical nexus between the answer sought and the subject of inquiry, in the event that the nexus is not "undisputabl[y]" clear already."

In this case, as we show below, not only did petitioner not object to the questions on the ground of lack of pertinency, but their pertinency was in any event undisputably clear, as the court below held. The case is distinguishable from *Watkins* in both of these decisive respects.

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pertinent passage of this Court's opinion, and the *Kamin* decision, at the page of the opinion referred to by this Court, similarly adverted to the necessity of a specific objection based upon grounds of pertinency. The pertinent passage of the *Kamin* opinion reads: "The defendant contends that it is not enough for a question to be pertinent—the witness must be informed of the subject matter, so that he may have a definite standard by which to determine whether he should answer. *Because if he was not so informed he admittedly indicated no interest, and did not choose to supplement any deficiency in his knowledge by asking either the Chairman or his own counsel, I regard this contention as immaterial.* * * *" (136 F. Supp. at 800; emphasis added).

" Cf. *United States* v. *Bryan*, 339 U. S. 323, 333; *United States* v. *Fleischman*, 339 U. S. 349, 352.

A. Petitioner at no time objected to the questions on grounds of lack of pertinency

That petitioner never objected on pertinency grounds to the questions involved in the indictment, or to any of the Committee's questions, is clear from a reading of the transcript (R. 218–240). As noted by the court below, "[t]he record of the hearing, at which Barenblatt appeared and during which the questions in controversy were asked, is devoid of any objection interposed on the ground of pertinency. Indeed, every indication is that he came prepared to refuse to answer any questions of moment—pertinent or not" (R. 299). Noting that petitioner appeared before the Committee accompanied by counsel and "armed with an eleven-page prepared, written statement entitled 'Objections to Jurisdiction of the Committee on Un-American Activities and to Questions Propounded by It,'" the court observed that "[t]he statement can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask appellant *any questions* or to conduct *any inquiry at all,* based on the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers"[23] (R. 299; emphasis added). "Whenever appellant was asked a question which he refused to answer," as the Court of Appeals further remarked, "he asked permission, or attempted without permission, to read the prepared statement" (R. 302).[24]

[23] The statement appears at R. 227–235.

[24] After petitioner had attempted a number of times to read the statement (R. 220–226), it was permitted to be received in evidence as "Barenblatt Exhibit No. 1" (R. 227–235), after

This prepared statement did not constitute—as petitioner now argues it should be deemed to have constituted (Pet. Br. 8–9, 60–61)—the making of an objection on grounds of lack of pertinency to the subject of the inquiry. It does not require an eleven-page "legal brief" to object that a question is not pertinent to the subject under inquiry, and objections based on "the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers" cannot do service for an objection based on alleged lack of pertinency.[65]

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which he was told by the Committee Chairman that, in order to save time, he might, whenever he declined to answer a subsequent question, make his declination on the grounds set forth in the statement (R. 235)—which procedure was followed (R. 237–238).

[65] In his effort to squeeze from the record of what transpired at the hearing an objection based on grounds of lack of pertinency, petitioner points to the fact that at one point in the eleven-page written statement which was received in evidence by the Committee there appeared (see R. 229) a quotation from a decision of this Court (*Jones* v. *Securities & Exchange Commission*, 298 U. S. 1, 26) that "[t]he citizen, when interrogated about his private affairs, has a right before answering to know why the inquiry is made" (Pet. Br. 9, 60). Clearly, however, a committee of Congress is not chargeable with knowledge that a witness is raising an issue as to the pertinency of a question to the subject under inquiry on the basis of nothing more than a quotation from a court opinion appearing in an eleven-page legal brief—physically received in evidence at the hearing—which is otherwise non-germane to that issue. Compare the clarity and specificity with which the issue of pertinency was raised in *Watkins*, 354 U. S. at 185, and see *Noonan* v. *Caledonia Mining Co.*, 121 U. S. 393, 400, where this Court emphasized the necessity that an objection, to be availed of in a judicial appeal, must be made at the trial with sufficient specificity to enable the trial court to consider its merits and obviate it if deemed well taken.

B. In any event, the pertinency of the questions was undisputably clear

We submit that in any event the pertinency of the questions which petitioner refused to answer was undisputably clear to him at the time he made his refusals.

We believe it to be clear from the Statement, *supra*, pp. 17–21, that, as the majority opinion below (at R. 297–303) demonstrates in detail, petitioner was thoroughly aware at the hearing of the nature of the subject under inquiry ("communism in education" (R. 298)), and how the particular questions were germane to that subject. Since petitioner does not, in our opinion, begin to refute this conclusion, there is no occasion to elaborate on the detailed showing in the opinion below that petitioner knew, when testifying, the nature of the subject of inquiry, and fully appreciated the "connective reasoning" by which the precise questions related to it.

Suffice it to emphasize that petitioner admitted having heard the testimony of witness Crowley, who testified shortly before petitioner (*supra*, pp. 17–18); that the Committee counsel, in introducing Crowley to the Committee, stated that the "field covered" would be "communism in education" and Crowley's "experiences and background in the party" (*supra*, p. 17); that the bulk of Crowley's testimony concerned his Communist Party activities at the University of Michigan (*supra*, pp. 17–18); and that Crowley identified petitioner as a member of the Party's Haldane Club at that university (*supra*, p. 18). Three witnesses who testified immediately after Crowley had also been identified by the latter as fellow members of the Com-

munist Party at the University of Michigan, and when asked about their Party activities there and elsewhere they refused to answer, invoking their privilege against self-incrimination (*supra*, pp. 18–19). Petitioner, who was next called, after admitting in reply to the Committee's questions that he had been a teaching fellow at the University of Michigan and that he knew Crowley while there and had heard his testimony, refused to state whether he had ever been a member of the Communist Party or of the Party's Haldane Club (*supra*, pp. 19–21).

As the court below stated, "[t]hese questions, and the balance of the questions forming the basis of the indictment, viewed in the light of what the committee counsel had said and Crowley's preceding testimony, all in Barenblatt's presence, made indubitably clear to Barenblatt the nature of the subject under inquiry to which the questions were directed" (R. 299). "To indicate the length," indeed, "to which the [Committee] went to indicate to Barenblatt the pertinency of the questions, even though the question of pertinency was not raised by him," the Court of Appeals referred to statements made by Chairman Velde and Committee member Doyle, at the conclusion of petitioner's testimony, to the effect that bills were then pending before Congress "dealing with the question of the Communist Party" and that information in the Committee's files "shows clearly that the witness [petitioner] has information about Communist activities in the United States of America, particularly while he attended the University of Michigan" which would be valuable to the Committee in carrying out its "Public Law 601

responsibility" to hold hearings and make recommendations for legislation (R. 301–302; see *supra*, pp. 20–21).[66]

Finally, as noted by the Court of Appeals (R. 302), petitioner's prepared statement which the Committee permitted to be received in evidence (see *supra*, pp. 89–90)—

> in no way indicates that he had any doubt as to the subject under inquiry or as to the pertinency of the questions asked. On the contrary, everything points to Barenblatt's knowledge of the subject and his knowledge of the pertinency of the questions asked.

It is submitted, in short, that on this record the following observations of this Court with reference to the contempt statute here involved fully apply to petitioner (*Sinclair* v. *United States*, 279 U. S. 263, 299, cited with approval in *Watkins*, 354 U. S. at 208):

> Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. * * *

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[66] In his petition for certiorari, petitioner argued that these statements could not be deemed to have "put [him] on notice of the nature of the inquiry" because they were made "after [his] testimony was concluded" (Pet. 14), but the argument is not repeated in the brief on the merits. As we pointed out in our brief in opposition (at p. 14, fn. 12), the statements in question were made while petitioner was still on the stand (see R. 240–241), and, moreover, they constituted but one of many indications noticed by the court below as evidencing petitioner's awareness of the subject of inquiry and the pertinency of the questions.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted.

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APPENDIX

Areas of Interest of the Federal Government in Higher Education

1. *Land-grant colleges and universities*

Congress appropriates substantial funds annually for the support and maintenance of the so-called land-grant colleges and universities, located in every state of the Union as well as in the several Territories. One of the oldest forms of federal aid to education, the land-grant college and university aid program began in 1862, when the Morrill Act, designed to insure the development in each State of at least one college adapted to the educational needs of persons engaged in agriculture and industry, was signed by President Lincoln. The act authorized grants to the States of 30,000 acres of land, or the equivalent in scrip, for each Representative and each Senator. State legislatures were expected to provide sites and essential buildings and to make additional appropriations for necessary operating expenses. In 1890, the Second Morrill Act was enacted, providing for annual grants of Federal funds for the land-grant institutions. The 1890 law provided for an initial appropriation of $15,000 for each State or Territory, with an increase of $1,000 each year for ten years, after which the annual appropriation was to be $25,000. In 1907, the so-called Nelson Amendment to the 1890 Act authorized new and increased appropriations. Further annual increases of Federal assistance for these colleges and universities have been provided through

the Bankhead-Jones Act of 1935, as amended in 1952. The latter Act provides that $1,000,000 be appropriated annually for the States and the Territories of Alaska and Hawaii to be distributed as flat grants of $20,000 each, and further provides for the appropriation of in excess of $1,500,000 to be allocated to the States and Territories in the proportion which the population of each is to the total population of all, as determined by the last preceding decennial census. The total annual federal appropriation for the land-grant colleges and universities for each of the years 1954–55 and 1955–56 amounted to $5,051,500.[1]

2. *The off-duty education program for personnel of the armed forces on active duty; the tuition aid program*

A significant and growing area of Federal concern with college and university education is the so-called voluntary off-duty education program for personnel of the armed forces on active duty, administered by the United States Armed Forces Institute, more commonly known as USAFI.[2] In addition to the courses offered directly by USAFI, eligible service personnel may enroll in correspondence courses available through USAFI from a large number of participating colleges and universities. The program is conducted by contract agreement between the Federal Government and the individual educational institutions. If the student enrolls through USAFI, the Government

[1] Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), pp. 20, 28–30.

[2] Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), pp. 89–95; USAFI Catalog (9th ed. 1957), pp. 5–7; American Council on Education, *Your Life Plans and the Armed Forces* (1955), pp. 53–62.

pays for the entire lesson service, the student paying only a small enrollment fee covering the administrative cost of enrollment and the price of textbooks and materials.[3]

In addition, under the so-called Tuition Aid Program, military personnel may, in their off-duty hours, and to a major degree at government expense, enroll in on-campus classes at eligible colleges and universities of their choice. Under the program the Government pays up to 75 per cent of the cost of tuition, not to exceed $7.50 per semester hour or $5 per quarter hour.[4]

3. *The ROTC programs and the Navy Five Term College Program*

The well known Reserve Officers Training Corps (ROTC) programs, which have long been established by all three branches of the armed services in leading colleges and universities,[5] constitute another important basis for congressional interest in and concern with college and university education. Less well known is the so-called Five Term College Program, an educational program designed to bring the academic education of Naval Reserve officers who have transferred to the Regular Navy up to the equivalent of that of a Naval Academy graduate. Under it, officers with less than two years of college background may be ordered to a Navy ROTC college to receive

[3] USAFI Catalog (9th ed. 1957), pp. 12, 105–107.

[4] American Council on Education, *Your Life Plans and the Armed Forces* (1955), p. 62; *Naval Training Bulletin*, Information and Education Issue, Bureau of Naval Personnel, Autumn 1957, NavPers 14900, pp. 9–10.

[5] See 10 U. S. C. 381 *ff.*; 34 U. S. C. 821 *ff.*; American Council on Education, *Your Life Plans and the Armed Forces* (1955), pp. 48, 131–132.

up to a maximum of five college terms of instruction at government expense.[6]

4. *The educational-assistance programs for World War II and Korean veterans*

Since World War II the Federal Government has subsidized in very large part the tuition and related educational costs of eligible veterans both of World War II and the Korean hostilities who have elected to take advantage of this major veterans' assistance program by furthering their education at State and private colleges and universities of their choice. The very substantial expenditure of Federal funds for this purpose (see fn. 7, *infra*) constitutes another important basis for continued congressional concern with the problem of Communism in education. The Servicemen's Readjustment Act of 1944 (58 Stat. 284) established the subsidization program for World War II veterans. Its counterpart for veterans of the Korean episode was embodied in the Veterans' Readjustment Assistance Act of 1952 (66 Stat. 663).[7]

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[6] See American Council on Education, *Your Life Plans and the Armed Forces* (1955), p. 135.

[7] During the 1953–54 school year—the year in which petitioner appeared before the Committee—veterans' training under these and related laws having to do with vocational rehabilitation was conducted in a total of 12,500 educational institutions, including those of college level and below. Expenditures during the 1954–55 school year brought the total federal payments since the inception of the education, training, and vocational rehabilitation programs for veterans to substantially in excess of $17,000,000,000. See Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), pp. 123–124, 127.

5. *The State Department's educational exchange programs*

The Department of State conducts, pursuant to congressional authorization, a program of International Educational Exchange involving in the neighborhood of 7,000 exchanges per year and 70 countries. The purpose of the program is to promote better understanding between the people of the United States and the people of other countries. Opportunities are provided for Americans to pursue educational activities abroad and for foreign nationals to undertake similar projects in the United States. Participants include students, educators, newsmen, industrialists, and others who are influential in molding public opinion at home and overseas. Federal funds allotted for educational exchange programs for each of the years 1954–55 and 1955–56 amounted to in the neighborhood of $20,000,000.[8]

Related to the International Educational Exchange program is the system of so-called Inter-University Contracts. For this program, federal funds are used to secure the services of American colleges and universities for assistance to foreign universities in improving teaching, curriculum, research, and extension work. Through training in the United States' institutions, and in their own institutions under faculty members provided by American institutions, the foreign professors are prepared to carry new methods into practice on a permanent basis. For this purpose, universities in the United States, under federal sponsorship, have contracted with colleges and universities

[8] Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), pp. 109–113.

of other countries. Under these contracts, professors from American universities are loaned to host universities in some 36 foreign countries. After a year or two of work in partnership with a professor in the other country, the counterpart professor comes to the contracting university in the United States to study for a year. Later, the American professors return to their regular work in the United States. In December 1955, approximately 500 American professors were at work in host universities in foreign countries, and about 250 professors from host countries were at universities in the United States. The federal funds which had been allotted to operate these programs as of September 1955 amounted to in excess of $50,000,000.[9]

6. *The deductibility for income tax purposes of contributions to colleges and universities*

Federal income tax law permits contributions to any non-profit institution operated exclusively for educational purposes to be deducted from gross income in calculating net taxable income (26 U. S. C. 23 (o) (2)). Contributions by individuals and corporations to all ordinary State and private colleges and universities are deductible under this provision.

7. *University research programs under government contracts*

Another important basis of congressional concern with the problem of Communist infiltration of the faculties and staffs of American colleges and universities is the extensive use by federal departments and agencies—paid for out of federal funds pursuant to contracts between the government departments and the individual universities—of the research

[9] *Id.*, pp. 115–117.

facilities of these institutions. The magnitude and significance of these contract research programs is reflected by the fact that the Department of Defense alone, in the single fiscal year 1954–55 (which commenced three days following petitioner's appearance before the Committee), entered into more than 1,900 research and development contracts with the nation's colleges and universities, involving a total expenditure of in excess of $138,000,000.[10] Atomic Energy Commission contracts for unclassified research in the physical sciences in university and college laboratories, as of 1956, are estimated to have involved the annual expenditure of some $14,300,000, with expenditures under contracts in the biological and medical sciences totaling an additional $8,000,000.[11] The National Science Foundation is another substantial contractor with American colleges and universities for the promotion of research. Established by the National Science Foundation Act of 1950,[12] its purpose is, among other things, "to develop and encourage the pursuit of a national policy for the promotion of basic research and education in the sciences," "to initiate and support basic scientific research * * * by making contracts or other arrangements (includ-

[10] Office of the Assistant Secretary of Defense (R & D), Department of Defense, *Department of Defense Non-Profit Research and Development Contractors* (Pamphlet RD 124/42, February 15, 1956), pp. 1–5. As a consequence of the heavy subsidization of university research by the Defense Department, a recent writer has referred to "large segments of the universities" as being virtually "satellites of the Armed Services" (Lerner, *America As a Civilization* (1957), p. 743).

[11] Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education, 1954–55 and 1955–56* (1956), p. 131.

[12] 64 Stat. 149 *ff.*, 42 U. S. C. 1861–1875.

ing grants, loans, and other forms of assistance) for the conduct of" such research, and to award "scholarships and graduate fellowships in the mathematical, physical, medical, biological, engineering, and other sciences" (§ 3, 64 Stat. 149). During the fiscal year 1955–56, Foundation contracts with colleges and universities for the support of basic research totaled some $9,600,000.[13]

[13] *Sixth Annual Report of the National Science Foundation, Fiscal Year 1956*, H. Doc. 49, 85th Cong., 1st sess., pp. 44–45.

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